European Commission
DG Comp

Stockholm 7 January 2021

Response on the Commission consultation on the revision of the guidelines for state aid for environmental protection and energy and relevant provisions in the General Block Exemption Regulation

The Confederation of Swedish Enterprise would like to thank the Commission for the opportunity to sending in our comments and would hereby like to state the following.

General comments

First of all, The Confederation of Swedish Enterprise would like to point out the importance of a holistic view of the EU regulations in this field. Currently, several other regulations such as the Energy Tax Directive and the EU Emissions Trading System are being revised, and a potential Carbon Border Adjustment Mechanism is proposed. The Commissions needs to assess the collective impact of all these regulations in order to create a coherent rules environment that can deliver best possible conditions for the EU industry to both develop competitiveness and to tackle the green transition.

The Energy and Environmental Guidelines (EEAG) and the accompanying provisions in the General Block Exemption Regulation (GBER), section 7 articles 36-49, makes it possible for Member States to grant aid in support of environmental protection of numerous kinds. The regulations are frequently used for large aid schemes. According to the latest State Aid Scoreboard (describing expenditure for 2018), more than half of all state aid expenditure was attributed to environmental and energy savings (55 percent) and is the prime objective in 20 of the Member States. The figures have probably risen even more since then.

This shows the importance of the regulation. The larger amount of state aid the regulations are covering, the more important that the design is well adapted. The large amounts of aid also entails the risk of considerable impact on competition between companies acting on the single market, but also greatly affects global competition, and can be a precondition to be able to go ahead of competitors in other parts of the world with more ambitious environmental targets.

This shows both the importance of, but also the difficult balancing act that follows the revision at hand. Because even though currently large amounts of state aid are being channelled through these regulations, a large substance of this aid are classified as aid only because of increased taxation on the majority of the tax subjects to steer against a more environmentally friendly behaviour (on carbon tax for instance), while maintaining a lower tax level on those who compete globally and where it is necessary to uphold reasonably competitive preconditions. Such an aid is rather a consequence of the state aid concept as it is defined by the EU courts, rather than a situation where these companies necessarily are enjoying more favourable conditions in relation to their competitors in other Member States.

The EEAG and accompanying provisions in the GBER needs to reflect the fundamental understanding that it is the business community that is and will be the engine of the transition to a sustainable society and will and must be the main driving force to achieve the high-set goals in this aspect. Companies invest and innovate to a large extent in more environmentally friendly technology – both because it is or will be necessary due to changes in regulations or standards, because consumers request it and it thereby can be a competitive advantage, but also because business in general seek to fulfil their role and do whatever they are able to do to contribute to a challenge that ultimately poses risk to all humanity. Given this, it is fundamental that the regulations do not lead to a change in perspective where selective state interventions become the main mean of attaining sustainability. This could crowd out private investment, punish already made private investments and spoil the competitive process that drives the ongoing green development. State aid should generally be in the form of broad measures that creates basic conditions for the industry to handle the green transition on a market basis.

At the same time, business cannot necessarily muster the necessary capital when it comes to very large and risky investments, which is shown by the fact that large amounts of state aid already are granted under the supervision of the Commission. It will also in the coming years be necessary to hold on to the possibility to in some cases take global competition into account, where it otherwise would lead to obvious and large-scale carbon leakage.

Changes to consider

In its Inception Impact Assessment, the Commission describes a number of options on how the current regulations can be changed in order to be more coherent with and supportive to the twin green and digital transformations of the economy.

- **Widened scope**
  We support the suggestion of widening the scope of the regulations to better care for parts of the work on sustainability that has evolved and is not included in a sufficient manner and technological evolution, ie. circular economy, hydrogen and CCS/CCU. When widening the scope to encompass new technology and solutions for sustainability, it is important to describe this in a general manner for it to be technology neutral and not excluding.

- **Safeguards for competition**
  It is of utmost importance that the principles of the balancing test (necessity, proportionality, incentive effect) are maintained to make sure that any aid granted is added value and does not crowd out private investments. We see no general need of transferring more aid measures from the Commissions scrutiny through notifications to GBER, as GBER already covers more than 95 percent of all new aid measures and entails less legal certainty to the aid beneficiaries than aid that has been approved by a Commission decision.

On the question of aid levels, we are open to consider changes in the aid levels to raise the aid amount in relation to eligible costs if there is evidence that such targeted changes are necessary. We would particularly draw the attention to the question on the use of claw-back mechanism and how it is used in investment cases where the outcome is uncertain. A higher rate of return on the investment should be allowed to stimulate private investment without raising the risk of a claw-back situation. The Commission should cater for larger margins in that aspect, so that a potential claw-back situation does not discourage private risk-taking.

- **Operating and investment aid**
  We are, just as the Commission, in general sceptical of state aid in the form of operating aid, because of its more distorting effects on competition. It can also have a more preserving effect of the economy, thereby hindering the rise of new production and technology. However, in some cases, when it comes to production of more environmentally friendly products, for instance fuel, it might still be necessary to maintain the possibility to grant aid also in the form of operating aid. There must however be a holistic view of this, to make sure that this not crowds out other potentially green production, and that there is a long-term view of successively wind up such operating aid schemes. In this aspect, Carbon Contracts for Difference can be one model of increasing the predictability of an investment and thereby increase the propensity of private investment.

- **Transparency**
  We are in general in favour of increased transparency to show the cost of taxpayers and how efficient different kind of measures are to society and the environmental goals. However, calculating the environmental benefit could be both complicated and costly, and the correct result could be questioned. Furthermore, it is not always enough to base the decision on what aid projects to engage in based only on what seems to be most cost effective. Some aid might for instance be necessary to grant to projects which are very high risk or in very immature markets, where the outcome is uncertain, or where the investment is necessary to create a new market or capability. It is therefore important that transparency requirements do not limit the way that aid measures can be designed, and any additional administrative burden needs to be kept at absolute minimum.

- **Tendering**
  Using public tenders is generally beneficial to enhance competition, minimise the cost for taxpayers and to make sure that the aid recipient is efficient. We are therefore open to the idea of including tender obligations in more aid situations where evidence show that it is suitable. Tendering or open application procedures are however not always appropriate or even possible. An aid situation could just as well come up on the initiative of a particular company which has a very particular project where aid might be necessary to correct a market failure. In such a case, tendering procedures might only be possible in some parts of the project or sometimes not at all. Therefore, it is crucial that a tendering obligation is not expanded so that it makes aid situations more difficult or rigid and should as a baseline be an option.

- **Broadening**
  The general idea to broaden the scope of aid schemes to direct competitors, various (related) industrial sectors and other areas of the economy could be a way to decrease the competition distortions that otherwise could be a fact. However, this would also probably lead to higher amounts of state aid and less accurate regulation whereas state aid should be used only when it is necessary. It would also make regulatory design more difficult, where there indeed could be reasons why a measure is designed in a narrower manner. Thereby it is partially a question of subsidiarity. We therefore are sceptic to include this as a mandatory requirement. Competition concerns should instead generally be addressed by using the principles of the balancing test and more frequently the use of tender procedures.

- **Cross-border opening**
  In general, aid granting by Member States will have as an effect that mostly companies active domestically are targeted. Schemes do however need to adhere to the non-discrimination principle. Aid granting takes less note of borders where tender procedures can be used, where companies from the entire single market can compete on the merits. All in all, the current rules on this matter is generally sufficient, and obligatory requirements in this aspect could lead to increased complexity, difficulties in designing aid measures and predicting budgets, and perhaps also disagreements between Member States. We therefore would advise against such new restrictions. Competition across border are however positive and should generally be encouraged.

Parts to maintain

While some aspects in the EEAG and GBER could be updated or expanded, there are some parts of the existing rules that are of particular importance to maintain.

- **Reduction of energy charges for Energy Intensive Users**
  The differentiation of energy and environmental taxes is a prerequisite of Member States being able to use higher general tax levels and use that as an effective policy instrument to steer towards more sustainable production and consumption, while at the same time maintaining the global competitiveness for businesses and avoiding production, occupation and carbon leakage. Exemptions and reductions specified in the Energy tax directive should preferably be automatically approved by the EEAG.

- **Food-based high-blend biofuels**
  In the field of biofuels, food-based high-blend biofuels still is an important part of a sustainable energy mix, and to preserve the possibility to maintain this a prolongation of the possibility to also grant state aid for food-based high-blend biofuels is necessary.