Cerame-Unie The European Ceramic Industry Association

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DRAFT ENVIRONMENTAL AND ENERGY STATE AID GUIDELINES: THE VIEW OF THE CERAMIC INDUSTRY – AN ENERGY INTENSIVE AND SME-DRIVEN SECTOR

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High energy prices and costs are a crucial challenge for the competitiveness of energy intensive industries, and in particular for SMEs. This was stressed also in the European Council's conclusions of 22 May 2013. Following that, the European Commission prepared a report on this subject which was published in the context of the 2030 climate and package on 22 January 2013.

The report, which combined macroeconomic figures with bottom-up data collected from several energy-intensive sectors including ceramics, clearly showed that energy prices in the EU are two to four times higher than in third competing countries. Furthermore, the figures show that SMEs pay much higher energy prices than large companies within the EU. For instance, electricity prices for EU ceramics companies are more than twice higher than for aluminium. Last but not least, the detailed analysis of energy bills confirmed that the combination of national and European legislation has contributed significantly to the increasing trend of retail prices through different instruments (RES charges, network fees, carbon price, etc.) and to the rising divergence of energy prices within the EU.

Therefore, the revision of the Guidelines on environmental and energy State aid for 2014-2020 (EEAG) should take this situation into account and should not further affect the competitiveness of energy intensive industries and SMEs by increasing the financial burden of energy bills. This objective can be achieved if the revision of EEAG is in line with the following principles:

1. Consistency with the Energy Taxation Directive (ETD)

The link between the guidelines and the ETD needs clarification in order to avoid a situation where the ETD admits certain tax reductions and exceptions which are prohibited by the EEAG. In particular, paragraph 174 should be amended to make it clear that any energy tax exemptions allowed by the ETD are automatically considered in line with state aid rules and fall under the revised General Block Exemption Regulation. This would avoid unnecessary additional burdens in terms of notification and demonstration of necessity and proportionality of the aid/tax reduction in question.

2. Eligibility criteria for tax exemptions and reductions in line with the ETD criteria

The draft text of guidelines (paras. 176 and 184) proposes eligibility criteria that are inspired from the ETS related legislation, i.e. 10% trade intensity and 5% tax costs/gross value added (GVA). However, it is not appropriate to use such criteria because the ETS is an EU-wide system while RES schemes are developed at national level and may be very different across the EU. Furthermore, the tax cost/GVA indicator disadvantages labour-intensive and SME-driven sector, because labour costs are included in the denominator of the parameter, hence the indicator does not reflect the real impact of taxation on profitability. In the case of ceramics, labour costs represent up to 70% or more of the GVA, hence it is more difficult for these sectors to meet the necessary thresholds, even though the impact of taxes on profitability may be very high.

Eligibility criteria shall consider the cumulative impact of all national taxes and charges on the competitiveness of the sector on the basis of its ability to pass through the additional costs. In this regard, an appropriate indicator is the total energy intensity of the sector, as defined in the current (2008) Guidelines and the ETD (i.e. total energy costs>3% of production value or tax costs>0.5% of

GVA). It shall be noted that the threshold of the tax costs/GVA proposed in the draft text is **ten times** higher than the one in the ETD (5% vs. 0.5%) and would exclude many energy-intensive sectors that are currently benefiting from tax reductions. Furthermore, it would be appropriate to replace the GVA with Gross Operating Surplus (GOS) in order to favour labour intensive and SME-driven sectors, since the GOS does not include labour costs.

The trade intensity shall not be added as a compulsory indicator but only as an alternative one and shall consider also the intra-EU trade in order to take into account the relevant market. Last but not least, Member States should have also the possibility to perform a qualitative assessment for sectors that do not meet the thresholds. This should include also the option of assessing the eligibility at plant level in case of unique electro-intensive processes where the whole sector does not qualify.

3. Aid intensity up to 100% to preserve industry's competitiveness

Paragraphs 179(a) and 186(b) would cap any aid at 80%-85 in order to fulfil the proportionality principle. However, in this case contrary to the usual notion, the aid is not intended to motivate a particular behaviour by the beneficiary or to promote a particular environmental outcome. Instead, this type of aid aims to protect energy-intensive businesses from competitiveness risks due to the EU's decarbonisation programme. Thus capping the aid achieves no environmental objective. Furthermore, in Member States where there are multiple electricity decarbonisation measures in place, the cumulative impact of multiple 20% residual costs can itself seriously damage EII competitiveness. Therefore in this instance aid intensities of up to 100% should be permitted in order to preserve industry's competitiveness. Last but not least, reductions and exemptions should apply not only to RES charges but to any measure having an impact on energy prices and reducing emissions, including capacity mechanisms, nuclear programmes, infrastructure support schemes, etc.

4. Maintaining the notion of aid in line with existing case law

Even though the notion of aid is independent from the content of the draft EEAG, the guidelines should not implicitly or explicitly expand the scope of this notion in a way contrary to the existing case law (e.g. Preussen Elektra doctrine). This is particularly relevant for paragraphs 180-186 and 127-128.

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