

# Position Paper

Climate, Energy and Environmental State Aid  
Guidelines (CEEAG)

30.07.2021

Since its foundation in 1992, Fachverband Biogas e.V. (German Biogas Association) has developed into Germany's and Europe's largest and leading representative body for the biogas industry. It represents manufacturers, plant constructors, agricultural as well as industrial biogas plant operators and institutions with the aim of promoting environmental protection and securing a sustainable energy supply. According to its statutes, the Biogas Association pursues the following primary objectives:

- Promotion of technical developments in the biogas sector
- Promotion, evaluation and communication of scientific knowledge and practical experience in the field of biogas technology for the benefit of the general public and the environment, conducting training courses for practitioners and consultants, issuing publications in written, visual and audio
- Promotion of the exchange of experience through participation in and organization of exhibitions, conferences and other events
- Promotion of international exchange of experience by establishing and maintaining contacts at home and abroad
- Promotion of an advisory network through members in the various regions
- Development of quality standards for planning and construction of biogas plants and plant components
- Development of quality standards for digestates
- Elaboration of quality standards for the operation of biogas plants

At the European level, the Biogas Association is represented by the European Biogas Association (EBA), which was founded in 2009 and now includes members from 25 EU member states.

**Contact:**

Fachverband Biogas e.V.  
Julia Münch  
Angerbrunnenstr. 12  
85356 Freising  
Germany

Telefon: 08161 9846-809  
Telefax: 08161 9846-70  
E-Mail: [info@biogas.org](mailto:info@biogas.org)  
Internet: [www.biogas.org](http://www.biogas.org)

# 1. General remarks

The draft for the new CEEAG determines whether or not aid will be approved for the promotion of renewable energies. To reach the new goal of reducing greenhouse gas emission by 55 % by 2030 EU member states need to realise a truly integrated energy transition in all sectors. For this, it is necessary to significantly accelerate and increase the volume of the uptake of all available renewable energies and to replace all fossil fuels as soon as possible. State Aid rules should not hinder Member States to choose the most appropriate policies and measures but to support already existing rules like the Renewable Energy Directive and the ambitions of Member States. Some of the newly defined criteria within the draft of the CEEAG concern biogas which is our main focus. Sustainable biomass currently plays a critical role in decarbonisation and will continue to be necessary for the EU to meet its climate targets in 2030 and beyond. A JRC report from earlier this year ("Towards net-zero emissions in the EU energy system by 2050") on the EU energy mix indicated that an increase in biomass usage from current levels will be needed to achieve net-zero by 2050. Furthermore, in the recently published 2030 Climate Target Plan's impact assessment, bioenergy remains the largest renewable resource across multiple scenarios, with further growth projected between now and 2050. Globally, the IEA's Net Zero Report confirms these assumptions.

Sustainable biomass is part of the biogenic carbon cycle, As a result, on a life-cycle basis using biomass instead of coal to produce electricity reduces carbon emissions by more than 85%, and just over 70% compared to fossil gas. Its dispatchability supports the system integration of wind and solar by providing renewable balancing power for variable supply and demand. It is a readily available and low-cost alternative to fossil fuels in Combined Heat and Power. Therefore, we strongly advise to adjust several provisions for bioenergy. The most important issues are named in the following chapter.

## 2. Evaluation of certain stipulations

### Recital 77

Recital 77 concerns subsidies for biomass. In detail it specifies:

*77. „Indirect land-use change (ILUC) occurs when the cultivation of crops for biofuels, bioliquids and biomass fuels displaces production of crops for food and feed purposes. Such additional demand increases the pressure on land and can lead to the extension of agricultural land into areas with high-carbon stock, such as forests, wetlands and peatland, causing additional greenhouse gas emissions. This is why Directive (EU) 2018/2001 limits food and feed crops-based biofuels, bioliquids and biomass fuels. ~~The Commission considers that certain aid measures can aggravate indirect negative externalities. The Commission will therefore, in principle, consider that support for biofuels, bioliquids, biogas and biomass fuels exceeding the caps defining their eligibility for the calculation of the gross final consumption of energy from renewable sources in the Member State concerned in accordance with Article 26 of that Directive, do not produce positive effects which outweigh the negative effects of the measure. Furthermore, the Commission will verify whether Member States took into account in the design of their support mechanisms the need to avoid distortions on the raw material markets from biomass support, in particular for forest biomass.~~ Member States must follow the sustainability criteria defined in Directive (EU) 2018/2001 in order to receive state aid.*

We think that this recital has to be deleted completely or adjusted as suggested. The world population is steadily increasing. This also increases pressure on land but from a range of different activities. ILUC also occurs because of higher demand for infrastructure, housing, food and other needs. The explosion of agricultural prices was primarily due to speculation 2007/2008<sup>1</sup>. However, in case there may be high-risk ILUC biofuels, they are clearly defined in the Renewable Energy Directive. Directive (EU) 2018/2001 defines strong sustainability standards for bioenergy production that have already been in place for biofuels since directive 2009/27/EC. There is no need to propose additional demands. For power and heat production, there is no limit on food and feed crops as feedstock within the Renewable Energy Directive – the decision to promote such energy lies within the Member States. The 7 % criteria is limited

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<sup>1</sup><https://www.weltagrarbericht.de/themen-des-weltagrarberichts/spekulation-mit-lebensmitteln.html>

to the transport sector and this cannot be changed through the backdoor by provisions in mere guidelines. There are legal aspects to be taken into account, promotion settings are in place all over Europe which generate far more than this 7 % for heat and power production. There is no reason to forbid further use of food and feed crops if they are sustainably produced. The conclusion in paragraph 77 “that support for biofuels, bioliquids, biogas and biomass fuels exceeding the caps defining their eligibility (...) do not produce positive effects which outweigh the negative effects of the measure” is misleading and untrue. In addition, the requirement to avoid distortions on the commodity markets should be deleted, as market events are too complex to be able to draw single-factor conclusions on the support of bioenergy. The requirement bears the risk that simplified and wrong conclusions are drawn to the detriment of bioenergy or that support programmes are set up too hesitantly despite the massive investments required. In addition, already existing support must not be jeopardised.

## **Recital 92 (b(ii / iii))**

Recital 92 specifies possible exemptions from tenders and identifies thresholds for this.

*92(b(ii / iii): Exemptions from tendering only for plants with less than 400 kW of installed electrical capacity*

Provisions under recital 92 should be specified for biogas: The new CEEAG should not use “installed electric capacity” as unit but “average electric capacity” due to the fact that in Germany biogas plants have to install at least 2,5 - 5 times the electric capacity in order to be able to produce electricity flexibly. The average capacity however reflects the real energy production per year and is considerably lower. Biogas plants with an installed electric capacity of 400 kW use in effect only 80-160 kW of average electric capacity in Germany. Such small plants should have the possibility to be exempted from tenders.

## **Recital 96**

*96. “When aid is granted in the form of operating aid or a tax reduction to support biofuels, bioliquids or biogas, and there is a quota or supply obligation which effectively sets a separate market price for biofuels, the aid amount must not exceed the difference between their production costs and that market price. Production costs may include a reasonable profit.”*

The prohibition of aid which may lead to overcompensation only for bioenergy in this paragraph is not comprehensible. The CEEAG pursue a technology-open approach in other areas, which should also apply to the area of mobility. In the sense of equal treatment, a negative unique selling point must not be created here. In addition, the overcompensation calculation, which would have to be based on assumptions of production costs or even company profits, would represent a regulation which is not court-proof. Planning certainty for investments and amortisation periods would be negatively impacted due to tax rates that have to be adjusted annually - based on past market data that fluctuate strongly over the course of the year. Given the expected practical problems, the overcompensation assessment must therefore also be dropped for biofuels.

## **Recital 107**

*107. „To avoid undermining the objective of the measure or other Union environmental protection objectives, incentives must not be provided for the generation of energy that would displace less polluting forms of energy. For example, where cogeneration based on non-renewable sources is supported, ~~or where biomass is supported,~~ they must not receive incentives to generate electricity or heat at times when this would mean ~~zero air pollution~~ renewable energy sources would be curtailed”.*

This recital intends to avoid undermining the EU environmental protection objectives by not promoting the generation of energy that would displace less polluting forms of energy. As stated before, using biomass on a life-cycle basis in place of coal to produce electricity reduces carbon emissions by more than 85%. Directive 2018/2001 provides a definition of renewable energy sources (RES), that includes energy from biomass and does not create any additional differentiation among RES technologies and logically does not derive any legal consequences from such differentiation. In addition, biomass must additionally comply with 'sustainability and the greenhouse gas emissions saving criteria' provided by Art. 29 to be qualified as a renewable source of energy. In this regard, bioenergy is the only renewable source of energy which complies with additional criteria including life cycle GHG saving assessment. Therefore, it is unacceptable that the CEEAG creates a new category of renewable energy, namely 'zero air pollution renewable energy sources' and de facto equalises biomass with non-renewable energy. This approach is not coherent with the existing block of EU law and discriminates against the use of bioenergy which is the main renewable technology in the heating sector. Moreover, it is worth underlining that sustainable biomass is - based on EU law - a carbon neutral source of energy, complying with the EU decarbonisation vision. Furthermore, air emissions from bioenergy installations are regulated under appropriate EU legislation, e.g. Ecodesign Directive, Medium Combustion Plant Directive, Industrial Emissions Directive. Installations must comply with these requirements, regardless of whether they receive state aid or not. Besides, "zero emission technologies" do not exist. This definition is only possible due to the so-called "tailpipe" approach that is chosen for the mobility sector. However, the tailpipe approach for the definition of "zero-emission" cars is wrongly chosen. The RED II methodology for GHG emissions calculation for bioenergy takes into account the whole life cycle of energy production from biomass. This approach should also be extended to all other transport fuels and also to power and heat producing technologies. To have zero emission tailpipe does not mean that the technology is clean and does not produce GHG emissions. GHG emissions can also occur at former or later stages, for example with electromobility by the production and disposal of batteries and by using non-renewable power mix. Since it does not matter for the climate at what stage GHG emissions are emitted but only how many GHG emissions are produced at all, all emissions have to be taken into account when analysing the whole life cycle. Thus, we strongly urge the EU Commission to abandon the tailpipe approach and to unify the methodology in a technologically neutral way that takes into account all GHG emissions from the whole life cycle, the logistics, production and disposal effects in order to create a fair and neutral approach for all technologies.

Against this background it is incomprehensible why bioenergy is equated with fossil fuels in terms of combined heat and power plants in this recital. We strongly call for the deletion of the references to biomass and 'zero air emission renewables' and recommend the above adjustment.

## **Recital 161./162./185.**

161./162./185.

161. „The Commission considers that certain aid measures have negative effects on competition and trade that are unlikely to be offset. In particular, measures that incentivise new investments in **fossil** natural gas-fuelled (including CNG and LNG) transport vehicles may lead to a reduction in greenhouse gas emissions and other pollutants in the short run but aggravate negative environmental externalities in the longer run, compared to alternative investments. ~~In addition, aid for the acquisition of clean transport vehicles may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market, or where it locks in certain technologies, hampering the wider development of a market for and the use of cleaner technologies. Therefore, in those cases, the Commission will make sure that only infrastructure that is necessary for renewable gases is further supported.~~ considers that the negative effects on competition of aid for the acquisition or leasing of natural gas-fuelled clean transport vehicles such as CNG and LNG vehicles are unlikely to be offset.“

162. “Aid for the acquisition or leasing of CNG and LNG vehicles may be regarded as not creating long-term lock-in effects and not displacing investments into cleaner technologies if, at the moment when the Member State notifies the Commission of its plans to implement the aid measure or when the aid measure is implemented, the Member State demonstrates that cleaner alternatives are not readily available on the market and are not expected to be available in the short term *or are as advantageous as other technologies*. The aid may also be regarded as not having lock-in effects or displacing investments into cleaner technologies where the Member State commits to ensure that those vehicles would be operated using blending of biogas or renewable gaseous transport fuels of non-biological origin (minimum 20%).”

Gas vehicles can also be used with biogas or other renewable gases. The technology is there and readily available and helps to decarbonise the system as soon as possible. There is no competition between the different renewable technologies yet. Even if renewable gas infrastructure may be more useful for heavy or maritime transport it is vital to have a certain infrastructure in place. The approach thus should be technology neutral and leave room for a variety of alternative fuels, especially for readily available and rather low-cost alternatives like biogas. We strongly support the long-term approach that fossil-based gaseous fuels in the transport sector should not be used anymore. However, aviation, long-distance shipping and heavy-duty road transport will still have to rely on gas. Gas vehicles can easily be used with biogas or other renewable gases. Therefore, there is no reason to forbid the investment in new gas mobility in general. This should be designed in such a way that it only affects fossil gas technologies. The aim is to decarbonise the whole energy system as quickly as possible. Thus, it is suggested to amend the recital as suggested above.