

Bioenergy Europe's Response to public consultation on the Climate, Energy and Environment State Aid Guidelines

Bioenergy is the largest source of renewable energy in the EU. Overall, it provides 10% of the gross final energy consumption and it accounts for more than half of the entire consumption of renewable energy in the EU. With the direct and indirect employment of approximately 71 000 of jobs, investments in bioenergy create an **incentive effect** for other economic activities and provide additional streams of revenues supporting the objective cohesive regional development of the EU¹.

The analysis of the main documents submitted by the Member States (Integrated National Energy and Climate Plans), and by the European Commission (Communication on 2030 Climate Target) demonstrates **the increasing role of bioenergy in the EU energy mix by 2030 and 2050**. Similarly, according to the recent report of the International Energy Agency '[Net Zero by 2050](#)' the modern bioenergy share taking into account assumption of lower supply of sustainable bioenergy, in the total energy supply will rise from 6.6% in 2020 to 18.7% in 2050.

The future of the bioenergy industry will depend on its sustainability performance. In this regard, the sector is in the process of implementing thoroughly sustainability criteria. Subsequently, bioenergy use will be based on the improved traceability and transparency of the value chain and the environmental impact of forest management that is necessary for climate change adaptation.

In this context, **public investments and support facilitate meeting both sustainability requirements and increasing the contribution of bioenergy in the energy mix**, providing dispatchable generation capacities that are complementary with the increasingly intermittent energy mix like wind and solar, and helping to hard to decarbonise sectors like heating, transport, and industry.

1. KEY IMPROVEMENTS TO THE DRAFT CEEAG

The transition towards climate neutrality will require unprecedented financial mobilisation. State aid conditioning access to public investment and guarantees will play the key role in tipping the market balance for numerous projects and allowing clean and innovative technologies to flourish. **The bioenergy sector advocates for the most efficient use of public support to modernise and innovate the bioenergy sector outlook.**

Therefore, the following 6 main points should be included in the CEEAG:

1. The revised CEEAG should seek consistency with existing legislation's definitions and the terminology. In this regard, any form of arbitrary differentiation among renewable technologies, for instance the introduction of the distinction between 'zero air pollution renewable energy sources', is unacceptable and undermines the principle of the coherence of the EU law.
2. Member States should benefit from increased flexibility to design fit for purpose support schemes and cut red tape. This can be achieved thanks to the higher notification thresholds.
3. Biofuels including sustainable low ILUC-risk-based biofuels and bioliquids should be recognised and supported as one of the main existing technologies facilitating the decarbonisation of the transport sector. Their contribution to GHG mitigation must be maintained.

¹ Bioenergy Europe, [Bioenergy Landscapes Report](#) 2020, Table 10m p. 37

4. Operational support for depreciated bioenergy plants should be allowed as it guarantees the use of cleaner energy solutions and minimises the risk of re-carbonisation.
5. The pace of decarbonisation of the heating sector must increase. The CEEAG should incentivise investments in clean and renewable heating solutions including district heating and cogeneration.
6. Essential innovations like bioenergy with carbon capture and storage and other biomass-based CO₂ removal technologies are crucial for achieving the EU's ambition to become climate-neutral by 2050. For NETs to be viable in the 2040s, scale up should be supported during the current decade. The CEEAG should contain concrete instruments to support them.

2. AMENDMENTS PROPOSALS

Bioenergy Europe rejects the differentiation among renewable energy sources introduced by paragraph 107

DRAFT CEEAG	OUR PROPOSAL
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.	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.

Justification

The EU law based on the Directive 2018/2001 provides a definition of the renewable energy (RES), namely:

*(1) 'energy from renewable sources' or 'renewable energy' means energy from renewable non-fossil sources, namely wind, solar (solar thermal and solar photovoltaic) and geothermal energy, ambient energy, tide, wave and other ocean energy, hydropower, **biomass**, landfill gas, sewage treatment plant gas, and biogas;*

This legal act does not create any additional differentiation among RES technologies and logically does not derive any legal consequences from such differentiation. 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 the use of bioenergy which is the main renewable technology in the heating sector. Moreover, it is worth underlying that sustainable biomass, is - based on EU law- a carbon neutral source of energy,

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complying with the EU decarbonisation vision. Furthermore, air emissions from bioenergy installations are regulated under appropriate EU legislation, e.g. Ecodesign Regulation, Medium Combustion Plant Directive, Industrial Emissions Directive. Installations must comply with these requirements, regardless of whether they receive state aid or not.

Moreover, such differentiation would create the following issues:

- Regulation (EU) 2019/943 provides clear rules on redispatching, including curtailment and priority dispatch. In this regard, redispatching comprising curtailment should be based on a market mechanism. The regulation also requires a guaranteed compensation for curtailed sources provided by Article 13 point 2.
- Priority dispatch is uniformly applied to electricity from renewable sources. Its scope has been also limited to small installation (less than 400 kw of capacity progressively moving to 200 kw by 2026), demonstration projects and existing power generating installations which enjoyed priority dispatch before entering into force of the regulation². The Draft CEEAG in **paragraph 107** introduces differentiation among RES, and by newly forging the term ‘zero air pollution renewable energy sources’, this would enforce new obligation on market operators to trace interactions between such sources and bioenergy assets which in certain cases may enjoy priority dispatch as well and are qualified as renewable energy sources in line with REDII.

Therefore, Bioenergy Europe calls for the deletion of the references to biomass and ‘zero air pollution renewables’ from this paragraph thereby, maintaining coherence with the key legal acts: Regulation (EU) 2019/943 and Directive 2018/2001.

Bioenergy Europe calls for the wider scope of the assessment of ‘incentive effect’ entailing counterfactual analysis within paragraph 30

DRAFT CEEAG	OUR PROPOSAL
<p>30. In certain exceptional cases aid can have an incentive effect even for projects which started before the aid application. In particular, aid is considered to have an incentive effect in the following situations:</p> <p>(...)</p> <p>c) operating aid granted to existing installations for environmentally friendly production where there is no ‘start of works’ because there is no significant new investment. In these cases, the incentive effect can be demonstrated by a change to operate the installation in an environmentally friendly way rather than an alternative cheaper mode of operation that is less environmentally friendly.</p>	<p>30. In certain exceptional cases aid can have an incentive effect even for projects which started before the aid application. In particular, aid is considered to have an incentive effect in the following situations:</p> <p>(...)</p> <p>c) operating aid granted to existing installations for environmentally friendly production where there is no ‘start of works’ because there is no significant new investment. In these cases, the incentive effect can be demonstrated by a change to operate the installation in an environmentally friendly way rather than an alternative cheaper mode of operation that is less environmentally friendly or based on the counterfactual</p>

² Regulation (EU) 2019/943, Article 12 point 5.

	analysis, that lack of such aid would result in less environmentally friendly choices of operators.
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Justification

The ‘incentive effect’ should entail the counterfactual analysis leading to conclusion that the lack of operational aid would result in the choice of less environmentally friendly solutions. Depreciated bioenergy plants could be taken as an example to illustrate this situation. .

The existing EEAG framework provides the possibility for Member States to grant operating aid for existing biomass installations after depreciation (EEAG section 3.3.2.3). It should be guaranteed that in justified cases such installations could be granted aid to maintain their capacity for the future use in a way that avoid distortion in the energy market.

Market dynamics in several Member States justify the need of operational support for existing biopower and CHP plants. The lack of uniform carbon pricing across the entire economy, the persistence of fossil fuels subsidies, and low wholesale energy prices, marked by the phenomenon of negative prices, do not allow certain plants to be profitable. Moreover, the necessity to purchase the sustainable fuel increases the expenses of operating such plants, compared to other renewable energy resources. The installations may provide also additional environmental services creating an incentive effect (e.g. the valorisation of material that would otherwise have been disposed, burned on the field, etc.).

We recommend that existing, depreciated assets should still be eligible to receive operational aid provided that their operators can prove that such plants without support could be substituted by less environmentally friendly assets. Otherwise, the possibility of lock in the fuels arises.

Bioenergy Europe calls for a clarification of paragraph 77

DRAFT CEEAG	OUR PROPOSAL
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	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, as specified in delegated act (EU) 2019/807 . 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, where no national legislation is in place or its enforcement is weak , causing additional greenhouse gas emissions. This is why Directive (EU) 2018/2001 limits food and feed crops-based biofuels, bioliquids and biomass fuels and (EU) 2019/807 provides safeguards . The Commission considers that certain aid measures can aggravate indirect negative externalities. The Commission will therefore, in principle, consider that support for biofuels, bioliquids,

<p>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.</p>	<p>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 and exceeding the respective thresholds in (EU) 2019/807, 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.</p>
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Justification

In order to avoid possible negative effects that might be accompanied with the production of biofuels, bioliquids and biomass of crops for food and feed the Commission has defined biofuels associated with a high risk of indirect land use change (iLUC). According to Art. 26 (2) of regulation EU 2018/2001 the eligibility will be phased out by 31. December 2030 the latest, starting in 1.1.2024. Therefore, delegated regulation (EU) 2019/807 specifies which biofuels can be associated with a high-risk of iLUC by defining certain thresholds. **All other biofuels have to be considered low-risk of iLUC. Thus it cannot be concluded that their expansion produces negative effects that outweigh the positive effects.**

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 promotion 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.

Bioenergy Europe calls for a clarification of paragraph 92 (b) (iii)

DRAFT CEEAG	OUR PROPOSAL
<p>92 (b) (iii). Exceptions from the requirement to allocate aid and determine the aid level through a competitive bidding process can be justified where evidence, including that gathered in the public consultation, is provided that one of the following applies:</p> <p>(...)</p>	<p>Exceptions from the requirement to allocate aid and determine the aid level through a competitive bidding process can be justified where evidence, including that gathered in the public consultation, is provided that one of the following applies:</p> <p>(...)</p> <p>(iii) for heat generation and gas production technologies – projects below 400kW installed average capacity.</p>

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(iii) for heat generation and gas production technologies – projects below 400kW installed capacity.

Justification

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.

Bioenergy Europe calls for a deletion of paragraph 96

DRAFT CEEAG	OUR PROPOSAL
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.	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.

Justification

The overcompensation assessment for biofuels is not envisaged for other subsidy categories, such as e-mobility, and thus puts biofuels at a disadvantage. 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 that is not very court-proof and would also not create any planning certainty for investments and amortisation periods due to tax rates that have to be adjusted annually - based on past market data that fluctuate strongly over the course of the year. The overcompensation assessment must therefore also be dropped for biofuels.

Bioenergy Europe calls for a clarification of paragraph 98

DRAFT CEEAG	OUR PROPOSAL
98. The subsidy per tonne of CO2 equivalent emissions avoided must be estimated for each beneficiary or reference project, and the assumptions and methodology for that calculation provided. To the	98. The subsidy per tonne of CO2 equivalent emissions avoided must be estimated for each beneficiary or reference project, and the assumptions and methodology for that calculation provided. To the extent possible, this

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<p>extent possible, this should seek to identify the net emissions reduction from the activity, taking into account life-cycle emissions created or reduced. To enable a comparison between the costs of different environmental protection measures, the methodology should usually be similar for all measures promoted by a Member State</p>	<p>should seek to identify the net emissions reduction from the activity, taking into account life-cycle emissions created or reduced, applied to all renewable energy sources. To enable a comparison between the costs of different environmental protection measures, the methodology should usually be similar for all measures promoted by a Member State</p>
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Justification

For the establishment of the authoritative benchmark of cost of different technologies, an objective life-cycle emission assessment should be applied to all renewable energy technologies, including those reliant on imported components.

Bioenergy Europe calls for a clarification of paragraph 318

DRAFT CEEAG	OUR PROPOSAL
<p>318. Incentives must not be provided for generation of energy that would displace less polluting forms of energy.</p>	<p>318. Incentives must not be provided for generation of energy from fossil fuels that would displace less polluting forms of energy.</p>

Justification

Adding the reference to fossil fuels emitting CO2 as a necessary clarification of this paragraph.