

Response to EU public consultation

New state aid guidelines must support the sustainable transformation of our industries

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While competition policy has played a vital role in securing fairer markets and the proper functioning of the internal market, it is no longer fully fit to respond to the new realities that European industry is confronted with. The global economic landscape is changing fast, and our industries are facing the twin green and digital transition. Competition rules are part of the toolbox to support the Green Transition. Although competition law is not in the lead when it comes to sustainable development, it can be an important enabler. Indeed, the different areas of competition policy can contribute to achieving the European climate objectives. Ensuring that state aid rules allow support for investments in decarbonisation, renewables, energy efficiency and the circular economy, is an effective way to support the Green Deal whilst ensuring the transformation of industries and the maintenance and creation of good quality jobs in Europe. State aid must become a powerful tool to support just transition strategies, but this demands a rethink of the rules and greater synergies between the EU's competition policy and industrial strategy.

On 7 June 2021, the European Commission published a draft Communication on the “Guidelines on State aid for climate, environmental protection and energy 2022” (CEEAG). The new guidelines are an update of the 2014 “Guidelines on State aid for Energy and Environmental Protection” (EEAG). To underscore the increased focus on climate protection, the Commission has added climate to the title. It is the intention of the Commission to adopt the CEEAG by the end of 2021 after a stakeholder consultation which runs until 2 August.

What's new in the proposed EU guidelines?

The current EEAG are mainly directed towards support for renewable energy, as well as towards shielding the energy-intensive industries from carbon leakage. They also provide aid for energy infrastructure and for security of electricity supply. The 2014 guidelines have been pivotal for dealing with the sharp increase in government subsidies for the environment and energy system, which now already represent 55% of all state aid in the EU (State Aid Scoreboard 2019).

As the fight against climate change has only intensified since 2014, a bold reform was highly needed. Indeed, under the Green Deal, the EU has set the ambitious target of becoming carbon-neutral by 2050, with a cut in emissions of (at least) 55% by 2030. In this respect, the Commission has estimated that to

achieve the new increased 2030 climate targets, 350 billion euros of additional annual investments will be needed. This means massive investments in carbon-free production processes, the deployment of renewables, the promotion of energy-efficiency, the decarbonisation of transport and the organisation of a circular economy. As viable business models are not always present and huge uncertainty exists about the pay-back periods, public money will be needed to cover the funding gap with traditional investments.

In order to reflect the Green Deal, the scope of the guidelines has been drastically expanded. The new guidelines now include clean mobility (to cover the difference in cost of ownership when acquiring a clean vehicle, as well as for the creation of charging and refuelling infrastructure), energy efficiency in buildings, the circular economy, biodiversity and the decarbonisation of the energy-intensive industries. Aid intensity can reach up to 100% of the funding gap in many areas and demand-side instruments, like contracts for difference are eligible for support. In line with the Green Deal, subsidies for new investments in fossil fuels will be phased out (except for natural gas, on condition that a lock-in situation is avoided or where it constitutes a necessary bridging technology). A novelty is also the introduction of public consultations on the main features of national aid schemes.

The new rules set out assessment criteria for 13 specific types of aid. A few highlights can be summarised as follows:

- Aid for the reduction and removal of greenhouse gas emissions. This category replaces the section on renewable energy in the previous guidelines. All technologies that reduce emissions and improve energy efficiency are now eligible and the category covers industrial decarbonisation, CCS/U, combined heat and power, and biofuels. It is not yet clear if the guidelines should include the removal of greenhouse gases from ambient air or not.
- Electricity-price compensation for energy-intensive users will continue to address the risk of relocation (a risk that rises if electricity prices reach a minimum level of costs per MWh – yet to be defined). However, the thresholds have been tightened, to come in line with the ETS criteria for free permits: trade intensity of 20% and electro-intensity of 10%. Also the scope of the compensation has been extended to all social and decarbonisation levies. However, beneficiaries still have to pay at least 25% of a levy or up to 1.5% of their Gross Value Added (GVA).
- The guidelines introduce the possibility of demand-side measures (e.g. contracts for difference) to incentivise the uptake of low-carbon products.
- It is the intention of the Commission to advance market integration of renewables by increasing the exposure of supported generation to market dynamics.
- Competitive bidding is the default mechanism for awarding aid.
- Aid for improving the energy performance of buildings will support the Renovation Wave Communication that sets the ambition to at least double the renovation rates in the next ten years (to achieve the emission reduction target for 2030, the EU must reduce buildings' emissions by 60%).
- Aid for the security of electricity supply will support capacity mechanisms, strategic reserves and demand-response.
- Aid for energy infrastructure now covers new and emerging categories, such as pipelines reserved for hydrogen and renewable gases. To receive aid, natural gas infrastructure

should be suitable for using hydrogen and renewable gases in the long-term. Aid for fossil fuel infrastructure is not included in the scope of CEEAG.

- Assessment criteria are established to support the early closure of power plants that burn coal, peat or oil shale and related mining operations (for foregone profits) and for the exceptional social and environmental costs arising from the closure of uncompetitive coal activities.
- The scope of the guidelines for the decontamination of polluted sites will be extended to include the rehabilitation of ecosystems and the protection and restoration of biodiversity.
- SMEs and assisted areas will benefit from an increased aid intensity level.

IndustriAll Europe's assessment of the proposed guidelines

IndustriAll Europe welcomes the new guidelines as state aid will be badly needed to support the transition of many of our fossil fuel based sectors. Indeed, the inclusion of new areas in the guidelines, allowing higher aid amounts (up to 100% of the funding gap) and the introduction of new aid instruments (such as contracts for difference) will increase the potential of state aid to foster the green investments needed to guarantee the long-term future of 'old' industries.

For industriAll Europe, it is important that the new guidelines:

- are aligned with EU policy objectives under the EU Green Deal and with the climate neutrality objective in particular that requires €520-575 billion to be invested annually in the EU Energy system (According to the European Commission own estimates);
- are also aligned with the Porto declaration and the European Pillar of Social Rights;
- are enshrined in a broader reflexion to reform the EU economic governance system and its main instruments (Growth and stability pact, European Semester) in a way that allows public authorities to play a more active role in creating the enabling conditions to cope with the green and digital transitions while leaving no one behind;
- strengthen the initiatives financed through the EU Recovery Plan and the National Resilience and recovery plans;
- encourage cooperation among member states, for instance through Important projects of common European interest;
- support the objectives of the Innovation Fund as well as the Modernisation Fund;
- contribute to strengthening the strategic value chains in Europe that are needed to develop a climate neutral industry and to creating a global level playing field in order to avoid that the transition towards a zero-carbon industry results in de-industrialisation and job leakage. The guidelines should strengthen Europe's strategic autonomy in global supply chains and result in replacing carbon-intensive imports by domestic low-carbon production;
- boost the production, transport and distribution of decarbonised electricity by the creation of smart grids, integrating renewables and enhancing interconnectivity;
- should support well-designed electricity markets by providing incentives to demand response and market-based capacity mechanisms in order to guarantee security of supply.

- focus on on breakthrough technologies that increase the energy-efficiency and contribute to the decarbonisation of industrial processes;
- guarantee that energy-intensive industries have access to secure, decarbonised and affordable energy;
- are in line with the Masterplan for a Competitive Transformation of EU Energy-intensive Industries¹ which has the ambition to ensure that these sectors maintain during the transition their capacity to generate the added value and related cash-flows needed to invest in a sustainable long-term future;
- support all low-carbon technologies, by respecting technological neutrality, so that the European Union does not deprive itself of any of the potential solutions necessary for the success of the objective of carbon neutrality in 2050 as envisaged by the Green Deal;
- support a circular economy that goes beyond collecting and recycling waste only, but also focuses on longevity, repair, re-use and re-manufacturing and contributes to the reduction of Europe's dependence on strategic raw materials. Further action is also needed to promote Green Public Procurement requiring low carbon, life-cycle and circular approaches in public purchases (e.g. EU waste regulations should act as a driver);
- take due account of social and territorial cohesion, notably the specific regional challenges in decarbonising industry and the roll-out of the essential infrastructure, with particular attention to ensuring investment in physical and digital infrastructure in rural areas and regions at risk of depopulation. The objective should be to avoid deepening regional inequalities and exacerbating fragmentation and increasing competition among regions.

For industriAll Europe, it is vital that the new guidelines have a stronger social dimension, notably by addressing the following concerns:

- the need to link state aids to legally binding commitments for companies to invest in European industrial facilities and the creation/maintenance of quality and sustainable jobs. As a result, the revision of the state aid regime must be aligned with the objectives of the EU's industrial strategy and strategic autonomy of the European Union;
- undertakings that violate EU social acquis and workers' rights should not benefit from state aid;
- the need to integrate social criteria (quality work, fair payment and working conditions) in all competitive bidding procedures, rather than in exceptional cases;
- the need to anticipate industrial change in a socially fair way through participatory planning and through social dialogue and industrial relations (that involves trade unions in a comprehensive way);
- the need for greater investment in skills which will be essential to support the twin transition and to contribute to a fair recovery, leaving no one behind, as proposed in the updated EU industrial strategy, and the European Skills Agenda which should support the green and digital transitions with initiatives like the Pact for Skills.

¹ [Masterplan for a Competitive Transformation of EU Energy-intensive Industries Enabling a Climate-neutral, Circular Economy by 2050 - Report](#) , 2019

More specifically, industriAll Europe asks that special attention should be paid to the Guidelines proposals on:

- clean hydrogen (especially the industrial upscaling of green hydrogen through electrolysis) and the needed infrastructure, as this is the missing link needed for the decarbonisation of energy-intensive industries (see more detail in industriAll Europe's [policy position on the role of clean hydrogen in achieving a Just Transition to a climate neutral industry](#));
- carbon capture and storage/use to deal with the hard-to-abate process emissions of the energy-intensive industries (they represent 40% of the emissions of the energy-intensive industries). Aid for energy infrastructure regarding CCUS should not only include solid infrastructure like CO2 pipelines but also other transport modes such as ships or trucks;
- ensuring better coverage of electricity price compensation for energy intensive industries. Under the new rules, some heavy industries or subsectors, e.g. cement and industrial gases, have effectively lost eligibility for state aid compensation for electricity costs. This should be reviewed urgently. The new provisions in Chapter 4.11 require a deep cut into necessary compensation of electricity costs. New Annex 1 means a massive reduction of economic activities entitled to state aid (e. g. NACE 19.20, 20.xx, 21.xx, 22.xx, 23.xx). The eligibility on the basis of a 4% trade-intensity and a 20% electro-intensity has been cancelled. Moreover, the increased threshold of trade intensity of at least 20% at Union level and an electro-intensity of at least 10% at Union level – means a significant tightening compared to the current trade intensity of 10%. This approach of capturing trade intensity by historical statistical data risks undermining industries in the process of transformation. It cannot consider potential competition or energy intensive production of suppliers within EU value chains. Furthermore, the proposed identification of sectors for indirect compensation during the 4th ETS-period is not sufficient either. The proposal identifies far fewer producers than needed to electrify the energy intensive industries;
- the fact that the technology readiness level of many breakthrough technologies to decarbonise the energy-intensive industries still remains very low. This means that the pathways to decarbonise these industries will require a dramatic acceleration of innovation and the promotion of all low emission solutions. Therefore, the business cases for green industry and green products (such as steel) must be strengthened. Financial support and incentives are needed to develop the new technology pathways and accelerate innovation. This will increase the readiness and competitiveness within European industry and contribute to less emissions. State aid rules should be flexible enough to integrate new technological developments and support the different decarbonisation pathways of these industries, including the first industrial deployment of new processes;
- development of demand-side instruments like EU carbon contracts for difference, as they are needed to help de-risk investments and make low-carbon products/solutions competitive with carbon-intensive industries;
- new technologies and innovations like smart grids, improved grid flexibility, micro grids, energy storage, interconnections or power-to-X facilities;
- the costs of stranded assets in energy-intensive industries (early amortisation of profitable installations);

- the use of scarce public resources in the most cost-effective way, e.g. by avoiding overcompensation;
- the need to attract investment in battery production and to boost the roll out of recharging and refuelling infrastructures to accelerate the market uptake of electric vehicles;
- sustainable and low-carbon fuels that will be needed for the parts of the transport system that are hard to electrify;
- the “energy efficiency first principle” since massive energy efficiency efforts are needed to reach the climate neutrality objective;
- the impact of the digital economy on energy needs and the climate, e.g. the roll out of digital infrastructures and equipment with due regard to meeting the increased energy and resource consumption with low carbon and renewable energy and a circular supply and value chain. It is also important to ensure that the energy needs of the growing number and growing size of computer clusters and 5G base stations are also covered by low carbon and renewable energy. Furthermore, an ambitious legislative framework is needed in order to reduce, reuse, and recycle hazardous e-waste that cannot yet be substituted (e.g. biodegradable sensors).