

2 August 2021

Revised Climate, Energy and Environmental Aid Guidelines (CEEAG)
ECGA Input to the Public Consultation

Policy Amendment Requests:

- * Allow for a disaggregated, PRODCOM level assessment, using an accurate representation of the subsector's data as to avoid a discriminatory distinction between sectors and subsectors.**
- * Include PRODCOM 23.99.14 - the artificial graphite, colloidal, semi-colloidal graphite, and preparations industry on the list of eligible sectors under Section 4.11 - Aid in the form of reductions from electricity levies for energy-intensive users as it meets all necessary criteria.**

The European Carbon and Graphite Association (ECGA), representing the European carbon and graphite producers, acknowledges the draft *Revised Climate, Energy and Environmental Aid Guidelines* (CEEAG), as an important tool helping Member States to meet their ambitious EU environmental, energy and climate targets while, at the same time, enabling the industry to maintain or improve its competitiveness.

A strong EU industry is vital to achieving the current EU level objectives. It is therefore of crucial importance to seek a better coordination/integration of EU policies towards the objective of industrial competitiveness. In the field of state aid for climate, energy, and environmental protection for example, this means that investments made by companies, across the entire value-chain should have the possibility to be rewarded by financial incentives to avoid competitiveness losses, carbon/resource leakages, etc.

With regards to the carbon and graphite products, they are essential to achieving the EU CO₂ targets as they are needed for nearly all CO₂ reduction technologies:

- Lithium (Li) batteries (up to 50% in weight of graphite anode material are needed in a Li battery)
- Steel recycling (without graphite electrodes no steel recycling is possible)
- Solar cells, semiconductors, LED's, etc. (high purity graphite is needed in the whole production process)
- Fuel cell (gas diffusion layers, bipolar plates, etc.)

Though progress has been made, further improvements can be sought, especially in respect to the aid in the form of reductions from electricity levies for energy-intensive users (pct.4.11 of CEEAG), and, in this context, ECGA would like to make the following comments (each detailed below):

- The assessment at NACE – code level is not always enough or representative for a particular industry; in particular if this industry is part of a NACE - code ending in xx.99 (99 = miscellaneous);
- The disaggregated PRODCOM level evaluation should be part of the eligibility assessments as to avoid discrimination between sectors and subsectors;

- Not allowing for a disaggregated assessment outside the NACE code or a qualitative evaluation beyond the quantitative ones disrupts the EU level climate change coherence and legal reasoning;
- Not allowing for a disaggregated PRODCOM level assessment would prevent the achievement of the main goal and objectives of the revised CEEAG;
- PRODCOM 23.99.14 - the artificial graphite, colloidal, semi-colloidal graphite, and preparations industry should be included on the list of eligible sectors under Section 4.11 - Aid in the form of reductions from electricity levies for energy-intensive users as it meets all necessary criteria;
- The CEEAG violate Article 5(4) of the Treaty on the European Union, and in Protocol No. 2 on the application of the principles of subsidiarity and proportionality annexed to the Treaties.

The assessment at NACE – code level is not always enough or representative for a particular industry; especially if this industry is part of a NACE - code ending in xx.99 (99 = miscellaneous)

For several sectors, the assessment at NACE 4 - level is not appropriate and this is often due to the wide heterogeneity of the sector found under one specific code. Even though those sectors meet the requirements for state aid when assessed individually at PRODCOM level or via a qualitative assessment for borderline cases¹, they are still not on the list of eligible sectors because the average electricity and trade intensities of their corresponding NACE codes do not meet the thresholds.

For example, NACE-code 23.99 - Manufacture of other non-metallic mineral products n.e.c. includes very different subsectors, with electro and trade intensities varying greatly as this sector includes various energy- and non-energy-intensive sub sectors. Therefore, an individual assessment of the subsector 23.99.14 – ‘Artificial graphite; colloidal or semi-colloidal graphite; preparations based on graphite or other carbon in the form of semi-manufactures’ seems necessary to determine the state aid eligibility, as a simple NACE electro and trade intensity approach would be misleading.

The disaggregated PRODCOM level evaluation should be part of the eligibility assessments as to avoid discrimination between sectors and subsectors

Even if they comply with the criteria, not including subsectors on the eligibility list because they are part of a heterogeneous sector group which does not meet the Commission’s indicators is discriminatory. Every individual company is part of both a sector and an individual subsector. The sector/subsector division is a technical way to categorise different industries for statistical purposes, but it says nothing about the electro and trade intensities characteristics of the industries themselves, nor of the companies that are covered by these industries.

For example, the table below demonstrates that subsector, PRODCOM 23.99.14 would be eligible for the aid in the form of reductions from electricity levies for energy-intensive users, according to the Commission's own criteria. However, because of the Commission's methodology assessing only NACE codes, subsector 23.99.14 is not included in Annex I of the Guidelines.

¹ As defined by Art 10b of the revised EU ETS Directive¹ for the period 2021-2030

Not allowing for a disaggregated assessment beyond the NACE code or a qualitative evaluation beyond the quantitative ones disrupts EU level climate change coherence and legal reasoning

The explanatory note on sector eligibility under Section 4.11 of the draft CEEAG clearly states that the ETS State aid guidelines for indirect cost compensation as well as the ETS Carbon Leakage List information and datasets have been used as basis for calculating the indicators necessary for determining the CEEAG eligibility list. Despite this, although both the ETS Carbon Leakage list² as well as the ETS State aid guidelines for indirect cost compensation³ allow for a qualitative and disaggregated level assessment, the present draft Guidelines do not offer this possibility.

Not allowing for a disaggregated PRODCOM level assessment would prevent the achievement of the main goal and objectives of the revised CEEAG

This means that if this very situation is not remediated, the sector will not be able to efficiently invest and use all technologies that can deliver the Green Deal. Even more, the aid will not be effectively directed where it is mostly needed to improve environmental and climate change protection. Last but not least, competition within this particular subsector as well as the integrity of the internal market would be distorted. Also, not considering PRODCOM sectors, the Guidelines will no longer align with the other relevant EU legislation (ETS phase IV or the ETS State Guidelines) in the environmental and energy field which allow for such a disaggregated assessment.

No sector should be excluded from receiving state aid which can contribute to an increase of environmental protection by, for example, incentivising investments to improve the environmental performances of existing processes or to implement/buy new environmentally friendly technology. Financial incentives, including in the form of state aids, must benefit to the whole value chain and enables Member States to take advantage of their own industrial capacities and natural resources in a resource-efficient manner. Enabling all sectors/subsectors to benefit from state aids to promote higher environmental and climate change standards can thus contribute, not only to create “green jobs”, but to make all jobs greener and economically sustainable and, at the same time, to support Europe’s industrial base.

² **Carbon Leakage List:** In cases where the “first level assessment” leads to the establishment of borderline cases a qualitative assessment can be carried out according to the criteria outlined in Article 10b paragraph 2 of the revised ETS Directive. Additionally, under the criteria defined in Article 10b paragraph 2 and 3 of the revised Directive some sectors may be eligible to submit applications for a quantitative assessment at a disaggregated level. The eligibility criteria for these “second level assessments” are set in the revised Directive under Article 10b paragraph 2 and 3.

³ **ETS State Aid Guidelines:** there is a possibility for sectors that do not meet the quantitative criteria to be eligible after a **qualitative** assessment if they meet one of the following conditions: borderline sectors with indirect emission intensity between 3% and 5%; trade intensity > 10%; sectors with information missing; or sectors insufficiently represented.

PRODCOM 23.99.14 - the artificial graphite, colloidal, semi-colloidal graphite, and preparations industry meets the necessary criteria needed to be included on the List of eligible sectors under Section 4.11⁴

With an electro intensity of approximately 75% and a trade intensity higher than 63%, the subsector surpasses the minimum 10% electro intensity and 20% trade intensity thresholds.

Eligibility criteria	Electro Intensity (EI)	Trade Intensity (TI)
CEEAG criteria currently in force (until December 2021)	10%	10%
	20%	4%
	7%	80%
Revised criteria CEEAG (from January 2022)	10 %	20%
	7%	80%
NACE 23.99-Manufacture of other non-metallic mineral products n.e.c. ⁵	31.7%	19.4%
PRODCOM 23.99.14 - the artificial graphite, colloidal, semi-colloidal graphite, and preparations industry ⁶	75.52%	63%

The CEEAG violate Article 5(4) of the Treaty on the European Union, and in Protocol No. 2 on the application of the principles of subsidiarity and proportionality annexed to the Treaties

The Court of Justice has held that by virtue of the principle of proportionality, *"the lawfulness of the prohibition of an economic activity is subject to the condition that the prohibitory measures are appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued."*⁷

The current revised CEEAG contravene the condition that the measures taken are appropriate and necessary to allow all European electro and trade intensive industries to achieve the legitimate above-mentioned objectives pursued by the legislation.

⁴ Data was collected, verified and audited by independent consultants, and should thus be considered as reliable and impartial.

⁵ Source: Explanatory note on sector eligibility under section 4.11 of the draft CEEAG (pg. 6)

⁶ Source: **Electro-intensity** - the average annual electricity consumption for PRODCOM 23.99.14, multiplied by the average EU electricity price for industrial consumers and divided by the average annual GVA (gross value added) of PRODCOM 23.99.14 (2013 – 2015); **Trade intensity** - Exports plus imports vis-à-vis countries located outside the EU, divided by turnover in the EU and imports from countries located outside the EU for PRODCOM 23.99.14

⁷ Case C-331/88 The Queen v Minister of Agriculture, Fisheries and Food and Secretary of State for Health ex parte Fedesa et al [1990] ECR I-4023 [13].

About the European Carbon and Graphite Association (ECGA)

The European Carbon and Graphite Association (ECGA) represents European carbon and graphite producers, the activities concerned are those under PRODCOM code 23.99.14 which covers the most energy intensive but also the most critical activities in the sector.

The European carbon and graphite producing sector is mainly concentrated in eight European Economic Area (EEA) Member States (Spain, Norway, Austria, Poland, France, Germany, the United Kingdom and Slovakia) but trading activities are present all over Europe. It is a multimillion 'added value' generating sector, with a worldwide turnover volume of €3 to 5 billion annually. Roughly 40,000 people are employed either directly or indirectly through this industry.

The main downstream market of the sector is the electrode market, especially the steel industry, for which the recycling of scrap steel reduces the CO₂-emissions of the sector. Electrodes for electric arc furnaces make up the biggest revenue share and create considerable interdependencies between the two sectors. Other important downstream markets are refractories, the aluminium industry, electronics and lithium-ion batteries.

The European carbon and graphite sector is an energy intensive sector, whose products and raw materials are an integral part of any economy and society. Standing at the beginning of most value chains, the sector is a critical supplier of essential materials and products in other key economic sectors including electronics, steel and batteries. The carbon and graphite sector therefore generate added value and growth through employment, economic growth, development, innovation and generating trade.
