CEEAG – public consulation

Republiková únia zamestnávateľov (RÚZ)

Republiková únia zamestnávateľov (RÚZ), registered in Transparency register No. 253757237449-25, is one of the most representative business associations in Slovakia and social partner for employer´s side in the social dialogue.

RÚZ welcomes the opportunity to comment on the draft CEEAG as an indispensable tool for achieving the objectives defined by the European Green Deal. We regret that this initiative has not been published in one package with the draft revised GBER, as we perceive both files as inter-connected and in certain way complementary. We would appreciate if such crucial initiatives were published in one package in any future revisions in order to understand the broader context of the proposed revisions of the State aid rules. Nevertheless, we would like to raise several issues which should contribute to improving the overall applicability, fairness and effectiveness of the State aid rules in the domain of climate, environment and energy:

Firstly, we would like to call for respect for these general principles in the draft CEEAG:

- the principle of technology neutrality and the principle of technological non-discrimination in achieving the carbon-neutrality objective, i.e. all technologies capable of contributing to the achievement of objectives proclaimed in Member States' National Energy Climate Plans (NECPs) in accordance with the increased decarbonisation objectives should be eligible for the State aid,
- specific needs of coal regions in transition should be taken into account by giving due respect to the principle of their just transition without leaving no one behind.

Chapter 2.1, para. 12 (Scope of application):

The draft CEEAG excludes the applicability of these guidelines to the State aid for nuclear energy. Such explicit exclusion of one technology that contributes significantly to achieving the proclaimed climate objectives of the European Union and its Member States is not justifiable. We call for incorporating nuclear energy within the scope of CEEAG.

Chapter 2.4, inclusion of new paragraphs (Definitions):

In line with the recently announced EU Hydrogen Strategy, the draft CEEAG should explicitly incorporate (as a dedicated sub-category) also the support for building the new hydrogen generation infrastructure, both for renewable and low-carbon hydrogen production. The State aid rules should aim at renewable and low-carbon electricity production used for hydrogen production, as well as for deployment of new electrolysers as such. As hydrogen seems to be the future energy carrier, it should be guaranteed that the State aid intensity would be as high as possible to motivate investors for building such facilities. It is underpinned mainly by the fact that building RES or low carbon hydrogen generation facilities could not be currently feasible based on market conditions, but require a significant amount of support. Such approach would contribute, primarily, to the development of hydrogen infrastructure and, secondary, enhance further the ability of local energy systems to integrate more RES.

We further propose the modification of the definition of *the polluter pays principle* in the way of introducing an exemption for repurposing activities in coal regions in transition. For regions which are specified in just transition plans adopted in accordance with Art. 11 of the JTF Regulation as those being in transition, the State aid rules should enable supporting remediation, rehabilitation, restoration and repurposing activities which are in line with the environment-related activities eligible under Art. 8 of the JTF Regulation. The term *repurposing* (on top of already defined terms *remediation*, *rehabilitation* and *restoration* already included in the draft CEEAG) should cover activities leading to remediation and/or rehabilitation of the contaminated industrial sites negatively impacted by the operation of the coal power plants and/or any associated activities, together with the change in use of this area that would enable transition to the environment-friendly activities eligible under Art. 8 of the JTF Regulation and further specified in national just transition plans. The above defined exemption should be applicable in those cases which do not fall within the scope of the Chapter *4.12 Aid for coal, peat and oil shale*

closure, i.e. such activities should be eligible under rules specified in the Chapter *4.6 Aid for the remediation of contaminated sites, for the rehabilitation of natural habitats and ecosystems and for biodiversity and nature-based solutions*.

Chapter 3.3, para. 69 (Weighing the positive effects of the aid against the negative effects on competition and trade):

We do not see the EU taxonomy framework to be an appropriate and well-placed instrument in this case. Under the current knowledge and status of the work in this area it could restrict areas of support to certain technologies and, thus, restrict the potential of other technologies capable to contribute to the stated climate and energy goals (mainly to the decarbonisation ones). This could make it difficult for certain Member States to follow the decarbonisation pathway in the future. Even more, today, the taxonomy framework is still not a closed one, but rather a living and evolving instrument that makes this issue even more difficult with bringing a huge amount of uncertainty in developing future energy projects. In this perspective, we do not find the EU taxonomy to be a suitable reference instrument in the draft CEEAG revision.

Chapter 4.8 (Aid for security of electricity supply):

RÚZ proposes that the draft CEEAG (with regard to capacity mechanisms) shall incorporate and reflect all relevant provisions of the Regulation (EU) 2019/943 of the European Parliament and Council on the internal market for electricity. Before the adoption of capacity mechanisms, Member States should carry out and perform proper resource adequacy assessment at the EU level and at the national level in line with relevant provision of the Regulation 2019/943 and other related legislation. This performance of resource adequacy assessment needs to be fully in line with the methodology which has been approved by the ACER and shall include the regional scope as well. Further, it must be ensured that there are no restrictions for cross-border participation to capacity mechanisms. It practically means that it is necessary to ensure that existing capacity mechanisms will not contain any discriminatory conditions between domestic and foreign capacity providers. We would like to appeal on the relevant authorities to supervise on the non-discriminatory and equal approach between domestic and foreign participants on capacity mechanism. Last but not least, we propose to add a provision governing those capacity mechanisms which apply since 4 July 2019 in order to adapt them to comply with Chapter 4 without prejudice to commitments or contracts concluded by 31 December 2019.

BIOFUELS

In its previous inputs into the Commission's consultations of Jul. 2019 and Dec. 2020 RÚZ already pointed out to

- **the need to review the existing EEAG regulating investment and operation aids granted to biofuels**, which were adopted prior to the debunking of all controversies surrounding biofuels, and European crop-based ethanol in particular, and
- the inconsistencies between the EEAG provisions and the Recast Renewable Energy Directive (RED II).

With this in mind RÚZ values the work carried out by the Commission on the revised CEEAG, which appear more coherent with existing EU climate and energy legislation and the recent authorisation of the Swedish tax exemption for higher biofuels blends of Oct. 2020. In particular, RÚZ embraces the alignment of the proposed guidelines 76, 77 and 96 regulating State Aid granted to biofuels with RED II provisions, which

- create a level playing field for sustainable biofuels and recognise their role in meeting the EU renewable energy targets;
- restrict the eligibility of crop-based biofuels to the compliance with RED II sustainability criteria;
- do not result in overcompensation.

However, RÚZ respectfully seeks clarification and changes from the Commission as regards:

- **The formal exclusion of high ILUC-risk biofuels from receiving State Aid**. This is, indeed, our interpretation of guideline 76, but we believe it should be made more explicit as, in fact, the provision

regulating high ILUC-risk biofuels (RED II Art. 26) does not belong to the sustainability criteria (Art. 29) but governs the sole accounting towards the RES-T target. An example of rephrasing could be: 'Support for biofuels, bioliquids, biogas and biomass fuels can only be approved to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts, **and do not fall in the category of high ILUC-risk biofuels**.

The reference to 'caps' in guideline 77. We understand that this provision refers to the cap imposed to crop-based biofuels in accordance with RED II Art. 26. However, RED II already specifies in its Art. 29.1 the purposes for which biofuels need to fulfil the sustainability criteria laid down in para. 2 to 10. It spells out a) the eligibility towards the renewable energy targets, b) the fuels suppliers' obligation, and **(c) the eligibility for financial support**. Consequently, the CEEAG should not restrict the eligibility of any biofuel beyond the sole compliance with RED II sustainability criteria defined in art. 29. The cap on crop-based biofuels is a limit towards the accounting towards the overall renewable energy target and the fuels suppliers obligation in transport, set by RED II art. 26, and is not a sustainability criterion applicable to these guidelines.

SPECIFIC AMENDMENTS TO DRAFT COMMUNICATION FROM THE COMMISION

Amendment 1 - Aid for the reduction and removal of greenhouse gas emissions

3.2.1.2.1 Appropriateness among alternative policy instruments

*40. Different measures to remedy the same market failure may counteract each other. This ~~is~~ **might be** the case ~~where an efficient, market-based mechanism has been~~ **with existing policies and measures** put in place to specifically counter the problem of externalities, as for instance the Union's ETS. An additional support measure to address the same market failure **might** risk~~s~~ undermining the efficiency of the market-based mechanism. Therefore, when an aid scheme aims at addressing residual market failures, the aid scheme must be designed in such a way as to not undermine the **existing degree of** efficiency of the market-based mechanism.*

Justification

The lack of a global-level playing field compared to third countries needs to be taken into account, in particular where production is not subject to similar CO_2 costs constraint as production in the EU. It should be recognised that for sectors particularly exposed to international competition, existing carbon pricing policy measures do not tackle effectively the problem of externalities. It is necessary that state aid rules – for example via Carbon Contracts for Difference - allow the full abatement costs of the new low-carbon processes to be covered.

Amendment 2 - **Aid for dismantling of CO_2 intensive production sites**

4.1.2 Scope and supported activities

75a new

This section also covers aid for dismantling CO_2 intensive production sites in relation to measures for the reduction or avoidance of emissions resulting from industrial processes.

Justification

Conversion to low carbon production processes in the EU will often occur in existing facilities (brownfield). Current state aid rules under the EEAG do not envisage aid for dismantling of CO_2 intensive production, while 100% aid intensity is possible for the remediation of contaminated sites. Granting of aid for dismantling CO_2 intensive production sites after transformation to low carbon production should be allowed under the revised state aid rules.

Amendment 3 - Support to the use of electricity made from renewable energy sources in energy-intensive production processes

4.1.2 Scope and supported activities

75b new

To create incentives for the conversion of energy-intensive production process in industry to electricity from carbon-free energy sources, aid may be granted for the use of electricity in the context of long-term power purchase agreements pertaining to electricity from renewable energy sources, even if the latter originates from plants that have been fully depreciated. The aid per energy unit shall not exceed the difference between the total production costs of the electricity provided under the long-term power purchase agreement and the relevant market price for electricity.

Justification

The costs associated with the active use of electricity from renewable energy sources, which can be ensured via long-term power purchase agreements, for instance generated by wind farms, are often higher than the costs at which electricity can be purchased on the market. With a view to the necessity of keeping electricity prices low in international competition, incentives to use renewable energy sources, and hence to contribute to the goal of climate neutrality, can be created through compensation of the cost difference via state support measures. It should be thus possible to support the use of electricity made from renewable energy sources in energy-intensive production processes, such as electric arc steelmaking, by compensating the extra costs involved through public aid.

<u>Amendment 4 -</u> Aid for the reduction and removal of greenhouse gas emissions

4.1.3.1 Necessity of the aid

78. Points 33, 34, 35 and 36 do not apply to measures for the reduction of greenhouse gas emissions. The Member State must identify the policy measures already in place to reduce greenhouse gas emissions. However, while ~~the Union's ETS and related~~ ***carbon pricing*** *policies and measures* ***, such as the ETS,*** *internalise some of the costs of greenhouse gas emissions, they may not yet fully internalise those costs* ***or fail to do so for sectors most exposed to international competition****.*

Justification

It is necessary that state aid rules – for example via Carbon Contracts for Difference - allow the full abatement costs of the new low-carbon processes to be covered. The lack of a global-level playing field compared to third countries needs to be taken into account, in particular where production is not subject to similar CO_2 costs constraint as production in the EU. For materials - such as steel - where the pass-through of unilateral regulatory costs is not possible due to fierce international competition, the aid level necessitates to cover the full abatement costs in the EU, i.e. the "difference" should be calculated between production costs of low carbon technologies and production costs of conventional ones, without discounting the avoided ETS-related costs. This is the only way to ensure that the actual realisation of respective projects will be guaranteed. Compensation limited to the amount of the difference to the CO_2 price in the European emissions trading system would be insufficient since a significant part of the extra costs would not be compensated and a competitive disadvantage compared with competitors from outside Europe would persist.

<u>Amendment 5</u>- Public Consultation

~~4.1.3.4 Public Consultation~~

~~85. Prior to the notification of aid, other than in duly justified exceptional circumstances, Member States must consult publicly on measures to be notified under this Section. The obligation to consult does not apply in respect of amendments to already approved measures that do not alter their scope or eligibility, and the cases referred to in point 86. To determine whether a measure is justified, bearing in mind the criteria in these guidelines, the following public consultation is required:~~

~~(a) for measures where the estimated average annual aid to be granted is ≥ EUR 150 million per year, a public consultation of at least 8 weeks' duration, covering:~~

~~(i) eligibility;~~

~~(ii) method and estimate of subsidy per tonne of CO2 equivalent emissions avoided (per reference project);~~

~~(iii) proposed use and scope of competitive bidding processes and any proposed exceptions;~~

~~(iv) main parameters for the aid allocation process57 including for enabling competition between different types of beneficiary;~~

~~(v) main assumptions informing the quantification used to demonstrate the incentive effect, necessity and proportionality;~~

~~(vi) where new investments in natural gas based generation or industrial production may be supported, proposed safeguards to ensure compatibility with the Union's climate targets (see point 110).~~

~~(b) for measures where the estimated average annual aid to be granted is < EUR 150 million per year, a public consultation of at least 4 weeks' duration, covering:~~

~~(i) eligibility;~~

~~(ii) proposed use and scope of competitive bidding processes and any proposed exceptions;~~

~~(iii) here new investments in natural gas based generation or industrial production may be supported, proposed safeguards to ensure compatibility with the Union's climate targets (see point 110).~~

~~86. No public consultation is required for measures falling under point 85(b) where competitive bidding processes are used and the measure does not support investments in fossil fuel based energy generation or industrial production.~~

~~87. Consultation questionnaires must be published on a public website. Member States must publish a response to the consultation summarising and addressing the input received. This should include explaining how possible negative impacts on competition have been minimised through the scope or eligibility of the proposed measure. Member States must provide a link to their consultation response as part of the notification of aid measures under this Section.~~

~~86. In exceptional and duly justified cases, the Commission might consider alternative methods of consultation provided that the views of interested parties are taken into account in the (continued) implementation of the aid. In such cases, the consultation might have to be combined with corrective actions to minimise possible distortive effects of the measure.~~

Justification

We are of opinion that the obligation to conduct such public consultations is not only excessive, but could also lead to severe negative consequences and weaken the overall aim of the CEEAG. First, the national strategies and programmes for decarbonisation already include measures, which are subject to public discussions and consultations. The public consultations introduced by the CEEAG would therefore represent a duplicity in this respect and would make the whole process substantially longer and more burdensome without providing an additional benefit. Secondly, since the projects are extremely time consuming and need to be planned very precisely from a time perspective, the whole process needs to be extremely effective. The execution of public consultations is very time consuming and will therefore result in unnecessary time stretches. This can subsequently be very problematic for numerous beneficiaries that would apply for aid. Such time loss may even result in the inability to deliver/build the desired projects on time (especially large GHG emissions reduction projects which are very complex and lengthy by their nature), i.e. until 2030.

With the above in mind, the obligation to perform an (additional) public consultation beforehand may result in discouragement or reluctance on the side of potential beneficiaries to apply for aid. They could presume that they will not be able to finish the projects on time (proceed with preparatory work and implement their decarbonizing projects) due to time constraints posed by the duration of the public consultation. Not finishing a project co-financed by state aid may result into financial losses that may effectively liquidate their business. These potential negative consequences go directly against what the CEEAG stands and aims for. Therefore, we

would like to encourage the Commission to reconsider the general obligation of a public consultation and to refrain from including such a general obligation in the new CEEAG.

Amendment 6 - **Proportionality of the aid**

89. Aid for reducing greenhouse gas emissions should in general be granted through a competitive bidding process as described in points 48 and 49. In such cases no limitation of aid intensity shall apply and aid can be granted up to 100% of the eligible costs.

Justification

Additionally, in the absence of caps on aid intensities in the section on proportionality of aid for measures directed at GHG emission reduction, We would propose a clarification that aid provided through competitive bidding processes is not limited to a maximum aid intensity.

Amendment 7 - **Proportionality of the aid**

4.1.3.5 Proportionality

96a When individual aid is granted on the basis of an aid scheme under section 4.1, there is no further obligation to notify individual aid pursuant to art. 108 (3) of the Treaty if the aid is granted on the basis of a competitive bidding process even if exceeding EUR 15 million threshold for beneficiary and project

~~111. Where risks of additional competition distortions are identified or measures are particularly novel or complex, the Commission may impose conditions as set out in point 72.~~

Justification

In respect to applicable procedures and to avoid any doubts it shall be clarified that in cases where individual aid is granted on the basis of an aid scheme (notified to the EC pursuant to Article 108(3)) under section 4.1 there is no further obligation to individually notify the measure, even if the aid under the scheme exceeds a certain aid amount. In the light of the above and in line with para 97, we suggest a deletion of the paragraph 111.

Amendment 8 - **Measures to ensure project development**

4.1.4 Avoidance of undue negative effects on competition and trade and balancing

101. To avoid a budget being allocated to projects that are not realised, potentially blocking new market entry, Member States must demonstrate that reasonable measures will be taken to ensure that projects granted aid will actually be developed, for example setting clear deadlines for project delivery, checking project feasibility as part of pre-qualification for receiving aid, ~~requiring collateral to be paid by participants,~~ or monitoring project development and construction.

Justification

We are of the opinion that examples of measures to be taken by the Member States to avoid the allocation of budget to projects that will not materialize is a very positive approach. However, we believe that 'requiring collateral' as stipulated in point 101 of the draft CEEAG (i) is excessive and (ii) artificially increases the costs of the project (e.g. collateral in form of a bank guarantee). Therefore, we suggest a deletion of this particular example.

Amendment 9 - **Aid for the reduction and removal of greenhouse gas emissions**

4.1.4 Avoidance of undue negative effects on competition and trade and balancing

103. Aid for decarbonisation can take a variety of forms including up front grants and contracts for ongoing aid payments such as contracts for difference[61]. Aid which covers costs mostly linked to operation rather than

investment should only be used where the Member State clearly demonstrates that this results in more environmentally friendly operating decisions.

[61] A contract for difference entitles the beneficiary to a payment equal to the difference between a fixed 'strike' price and a reference price – such as a market price, per unit of output. They have been used for electricity generation measures in recent years but could also involve a reference price linked to the ETS ***or any globally applied carbon price for sectors most exposed to international competition*** *– i.e. 'carbon' contracts for difference. Contracts for difference may also involve paybacks from beneficiaries to taxpayers or consumers for periods in which the reference price exceeds the strike price.*

Justification

It is necessary that state aid rules – for example via Carbon Contracts for Difference - allow the full abatement costs of the new low-carbon processes to be covered. The lack of a global-level playing field compared to third countries needs to be taken into account, in particular where production is not subject to similar CO_2 costs constraint as production in the EU. For materials - such as steel - where the pass-through of unilateral regulatory costs is not possible due to fierce international competition, the aid level necessitates to cover the full abatement costs in the EU, i.e. the "difference" should be calculated between production costs of low carbon technologies and production costs of conventional ones, without discounting the avoided ETS-related costs. This is the only way to ensure that the actual realisation of respective projects will be guaranteed. Compensation limited to the amount of the difference to the CO_2 price in the European emissions trading system would be insufficient since a significant part of the extra costs would not be compensated and a competitive disadvantage compared with competitors from outside Europe would persist.

Amendment 10

134. Measures that incentivise new investments in natural gas-fired equipment aimed at improving the energy efficiency of buildings may lead to a reduction in energy demand in the short run but aggravate negative environmental externalities in the longer run, compared to alternative investments. Moreover, aid for the installation of natural gas-fired equipment 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. ~~The Commission considers that the positive effects of measures that create such a lock-in effect are unlikely to outweigh their negative effects. As part of its assessment, the Commission will consider whether the natural gas-fired equipment replaces energy equipment using the most polluting fossil fuels, such as oil and coal.~~ ***Member State may invest in a replacement of the most polluting solid fuels-fired equipment for gas-fired equipment in buildings, if replacement for cleaner technologies is not economically feasible and if the decarbonisation of gas infrastructure is ensured.***

Justification

In Slovakia, we have approximately 200 ths. solid-fuels boilers, by far the most significantly contributing to poor air quality, which causes app. 5 ths. domestic premature deaths per year (estimation of EEA). The full replacement for heat pumps would be worth app. 1,6 bln. €. The full replacement for gas condensing boilers would be worth app. 600 mil. €. Even the most modern biomass (solid fuels) boilers are not suitable for tackling the air quality problem in Slovakia (e.g. because large part of population is located in mountain/hill basis with the low air movement) and heat pumps are not technically suitable for colder parts of Slovakia. Moreover, the further Slovakia's GHG reduction is planned via the use of the gas infrastructure, by the implementation of renewable/low carbon gases and CCUS. Thus, natural gas lock-in effect is not relevant.

Amendment 11

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 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 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. **This does not apply to transport vehicles using bio-CNG and bio-LNG.**

Justification

Exemption for the vehicles using bio-CNG or bio-LNG.

Amendment 12

184. Aid for the deployment or upgrade of refuelling infrastructure may unduly distort competition when 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 considers that the negative effects on competition of aid for the deployment or upgrade of refuelling infrastructure supplying natural gas-based fuels such as CNG and LNG are unlikely to be offset. ***This does not apply to bio-CNG and bio-LNG refuelling infrastructure.***

Justification

Exemption for the bio-CNG or bio-LNG refuelling infrastructure.

Amendment 13 - **Targeted and distinct approach on harmonised and not-harmonised environmental taxes**

4.7.1.2 Scope and supported activity

260. Granting a more favourable treatment to some undertakings may facilitate a higher general level of environmental taxes or parafiscal levies. Accordingly, reductions in environmental taxes or levies can at least indirectly contribute to a higher level of environmental protection. However, the overall objective of the environmental tax or parafiscal levy to discourage environmentally harmful behaviour should not be undermined.

261. The Commission will consider that tax or levy reductions do not undermine the general objective pursued and contribute at least indirectly to an increased level of environmental protection, if a Member State demonstrates that both of the following conditions are fulfilled:

(a) the reductions are well targeted at those undertakings most affected by a higher tax;

(b) a tax rate, which is generally applicable, is higher than would be the case without the reduction.

262. For this purpose, the Commission will assess the information provided by Member States. That information should include the sectors or categories of beneficiaries covered by the reductions and a description of the situation of the main beneficiaries in each sector concerned and an explanation of how the taxation may contribute to environmental protection. The sectors eligible for the reductions should be properly described and a list of the largest beneficiaries for each sector should be provided (considering, in particular, turnover, market shares and size of the tax base).

262a (new) When environmental taxes are harmonised, the Commission can apply a simplified approach to assess the necessity and proportionality of the aid. In the context of Directive 2003/96/EC ([78]) ('ETD'), the Commission can apply a simplified approach for tax reductions respecting the Union minimum tax level. For all other environmental taxes, an in depth assessment of the necessity and proportionality of the aid is needed.

(78) ***Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003 p. 51) sets such minimum tax levels.***

4.7.1.3 Minimisation of distortions of competition and trade

Situation 1: Harmonised environmental taxes

262b (new). The Commission will consider aid in the form of tax reductions necessary and proportional provided (i) the beneficiaries pay at least the Union minimum tax level set by the relevant applicable Directive; (ii) the choice of beneficiaries is based on objective and transparent criteria; and (iii) the aid is granted in principle in the same way for all competitors in the same sector, if they are in a similar factual situation.

262c (new). Member States can grant the aid in the form of a reduction of the tax rate or as a fixed annual compensation amount (tax refund), or as a combination of the two. The advantage of the tax refund approach is that undertakings remain exposed to the price signal, which the environmental tax gives. Where used, the amount of the tax refund should be calculated on the basis of historical data, i.e. the level of production, and the consumption or pollution observed for the undertaking in a given base year. The level of the tax refund must not go beyond the Union minimum tax amount that would result for the base year.

262d (new). If the beneficiaries pay less than the Union minimum tax level set by the relevant applicable Directive, the aid will be assessed on the basis of the conditions for non-harmonised environmental taxes as set out in paragraphs (263 to 270).

Situation 2: Non-harmonised environmental taxes and specific situations of harmonised taxes

263. The requirements set out in point 264 apply in addition to the requirements set out in Section

3.2.1.1.

264. ***For all other non-harmonised environmental taxes and in the case of harmonised taxes below the Union minimum levels of the ETD (see paragraph (262a (new) t****~~T~~**

he Commission will consider the aid to be necessary if the following cumulative conditions are met:

(a) the choice of beneficiaries is based on objective and transparent criteria, and the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation;

(b) the environmental tax or parafiscal levy without the reduction leads to a substantial increase in production costs calculated as a proportion of the gross value added for each sector or category of individual beneficiaries;

(c) the substantial increase in production costs could not be passed on to customers without leading to significant sales reductions.

~~*4.7.1.3.2 Appropriateness*~~

265. The requirements set out in points 266 and 267 apply in addition to the requirements set out in Section 3.2.1.2.

266. The Commission will authorise aid schemes for maximum periods of 10 years, after which a Member State can re-notify the measure if it re-evaluates the appropriateness of the aid measures concerned.

267. Member States can grant the aid in the form of a reduction of the tax or levy rate or as a fixed annual compensation amount (tax or levy refund), or as a combination of the two. The advantage of the tax refund approach is that undertakings remain exposed to the price signal, which the environmental tax or levy gives. Where used, the amount of the tax refund should be calculated on the basis of historical data, that is to say the level of production, and the consumption or pollution observed for the undertaking in a given base year.

~~*4.7.1.3.3 Proportionality*~~

268. Section 3.2.1.3 does not apply to aid in the form of reductions in environmental taxes and parafiscal levies.

269. The Commission will consider the aid to be proportionate if at least one of the following conditions is met:

(a) aid beneficiaries pay at least 20 % of the national environmental tax or parafiscal levy;

(b) the tax or levy reduction does not exceed 100 % of the national environmental tax or parafiscal levy, and is conditional on the conclusion of agreements between the Member State and the beneficiaries or associations of beneficiaries whereby the beneficiaries or associations of beneficiaries commit themselves to achieve

environmental protection objectives which have the same effect as if beneficiaries or associations of beneficiaries paid at least 20 % of the national tax or levy. Such agreements or commitments may relate, among other things, to a reduction in energy consumption, a reduction in emissions and other pollutants, or any other environmental measure.

270. Such agreements must satisfy the following cumulative conditions:

(a) the substance of the agreements is negotiated by the Member State, specifies the targets and fixes a time schedule for reaching the targets;

(b) the Member State ensures independent and regular monitoring of the commitments in the agreements;

(c) the agreements are revised periodically in the light of technological and other developments and provide for effective penalties in the event that the commitments are not met.

Justification

The draft CEEAG (section 4.7 Aid in the form of reductions in taxes or parafiscal levies) excludes the targeted and distinct approach on harmonised and not-harmonised environmental taxes, which is in place under the current EAAG 2014-2020. The Commission proposal would entail that a certain category of beneficiaries will not be able to receive state aid related to harmonised environmental taxes - when above Union minimum tax level set by the relevant applicable Directive is complied with- via a simplified approach for the assessment of necessity and proportionality of aid. As a consequence, the more restrictive criteria to assess the necessity and proportionality of aid (paragraphs 263 et seqq. of the draft CEEAG) would apply to all beneficiaries and to all type of environmental taxes.

This proposal is against the principle of fair taxation, as it would pose a disproportionate burden on the European steel industry, would lead to an increased risk of carbon leakage and could undermine the intra EU level-playing field among EIIs companies and sectors.

We call on the European Commission to reintroduce the differentiation between harmonised and non-harmonised taxes and the related targeted approach (paragraphs 172-175 EEAG 2014-2020).

Amendment 14

326. Measures that incentivise new investments in energy generation based on natural gas may support security of electricity supply but aggravate negative environmental externalities in the longer term, compared to alternative investments in non-emitting technologies. To enable the Commission to verify that the negative effects of such measures can be offset by positive effects in the balancing test, Member States should explain how they will ensure that such investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target. In particular, the Member States should explain how a lock-in of this gas-fired energy generation will be avoided. For example, this may include binding commitments by the beneficiary to implement decarbonisation technologies such as CCS/CCU or substitute natural gas by renewable or low carbon gas. ~~or to close the plant on a timeline consistent with the Union's climate targets~~.

Justification

Decarbonisation measures should be strongly preferred before decommissioning.

Amendment 15

348. As regards the construction or upgrade of district heating generation installations, measures that incentivise new investments in energy based on natural gas may reduce greenhouse gas emissions in the short run but aggravate negative environmental externalities in the longer run, compared to alternative investments. For those investments in natural gas to be seen as having positive environmental effects, Member States must explain how they will ensure that the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target and, in particular, how a lock-in of the gas-fired energy generation or gas-fired production

equipment will be avoided. For example, this may include binding commitments by/from the beneficiary to implement CCS/CCU or substitute natural gas by renewable or low carbon gas. ~~or to close the plant on a timeline consistent with the Union's climate targets.~~

Justification

Decarbonisation measures should be strongly preferred before decommissioning.

<u>Amendment 16</u> - **Protection of energy intensive industries (EIIs) against undue energy costs**

4.11.2 Scope: Levies from which reductions can be granted

354. Under this Section, Member States may grant reductions from levies on electricity consumption which finance an energy policy objective. This includes levies financing support to renewable sources or to combined heat and power and levies financing social tariffs or energy prices in isolated regions. ~~*This Section does not cover levies which reflect part of the cost of providing electricity to the beneficiaries in question. For example, exemptions from network charges or from charges financing capacity mechanisms are not covered by this Section. Levies on the consumption of other forms of energy, in particular natural gas, are also not covered by this Section.*~~ ***Above principles shall apply analogously to environmental charges financing the support of highly-efficient cogeneration, capacity mechanism and other charges which directly fund the implementation of the climate objectives set out in the European Green Deal.***

Justification

Under the existing EEAG (section 3.7), Energy Intensive Users (EIUs) exposed to international competition are entitled to aid in the form of reductions in or exemptions from environmental taxes and in the form of reductions in funding support for electricity from renewable sources. Without such reductions and exemptions EIUs would be placed at such a competitive disadvantage that it would not be feasible to introduce the support for renewables at all. Such reductions and exemptions need not only to be maintained, but must be strengthened.

This becomes increasingly important in relation to the contribution of EIUs to the overall EU climate change policy targets, while avoiding carbon, investment, jobs leakage to third countries with less environmental ambition. Rising shares of renewables will most likely be accompanied with increased generation adequacy measures in the form of capacity mechanisms. In analogy to the situation with contributions to renewables, financing such costs could easily undermine the competitiveness of EIUs exposed to international competition, such as steel. Furthermore, EIUs offer solutions in these fields as they contribute to the stability of the grid thanks to their specific consumers' profiles. Hence, they should be also shielded from an undue extent of these and similar regulatory costs, taking into account their overall contributions to taxes and levies. We thus call on the Commission to lift the proposed restrictions in the draft CEEAG (paragraph 354).

The new CEEAG should allow for reductions based on a flexible definition of environmental charges. This would avoid long processes for individual notifications and would harmonize rules across member states, leading ultimately to a more effective EU climate change policy. The lack of uniform rules would otherwise hamper legal certainty and affect competition in the EU internal market. The issue of legal certainty becomes particularly important in view of investment planning in relation to the transition to low-carbon production processes.

<u>Amendment 17</u> - **Conditionality criteria**

~~*356. The Commission considers that Member States may grant reductions to levies under this Section only where the overall cumulative level of these levies (before any reductions) is at least […] EUR/MWh.*~~

Justification

Compensation should not be made conditional to a minimum level of levies. Due to the very large energy consumption and the partial nature of exemptions, energy intensive industries such as steel would have major

competitive disadvantages compared to producers based in third countries that do not have comparable climate legislation and related regulatory costs.

Amendment 18 - **Exclusion of the industrial gases sector**

4.11.3.1 Eligibility

357. *The aid under this Section should be limited to sectors that are at a significant competitive disadvantage and risk of relocation outside the Union because of the eligible levies. The risk of relocation depends on the electro-intensity of the sector in question and its exposure to international trade. Accordingly, aid can only be granted if the undertaking belongs to a sector facing a trade intensity of at least 20 % at Union level and an electro-intensity of at least 10 % at Union level. In addition, the Commission considers that a similar risk exists in sectors that face an electro-intensity of at least 7% and face a trade intensity of at least 80%* ***or in sectors that face a lower trade exposure but at least 4% and have a much higher electro-intensity of at least 20%****. The sectors meeting these eligibility criteria are listed in Annex I.*

Justification

The eligibility criteria do not include the option of 4% trade intensity and 20% electro-intensity that was present in the previous guidelines. Due to that, the list of eligible sectors excludes the industrial gases (NACE code 2011) – e.g. hydrogen and oxygen - from the scope of application of the reductions. These are an integral part of the steel value chain today, and will be even more crucial for the transition to low carbon technologies in the nearest future.

Amendment 19 - **Protection of energy intensive industries (EIIs) against undue energy costs**

4.11.3.2 Proportionality of the aid measure

359. The Commission will consider the aid to be proportionate if the beneficiaries pay at least ~~25~~ ***15*** *% of the costs generated by the electricity levies which a Member State includes in its scheme.*

360. However, an own contribution of ~~25~~ ***15*** *% of the eligible electricity levies might go beyond what undertakings which are particularly exposed can bear. Therefore, the Member State may instead limit the additional costs resulting from the electricity levies to ~~1.5~~* ***0.5*** *% of the gross value added (GVA) of the undertaking concerned.*

Justification

These reductions and exemptions ensure the competitiveness of EIIs sectors - including the steel industry - and contribute to the overall environmental objectives as they support environmental ambition in the EU while avoiding carbon, investment, jobs leakage to third countries with less environmental ambition. The European Commission's proposals substantially weaken those provisions. We urge the Commission to maintain state aid intensity at the level of 85% and the level of protection to the most exposed undertakings at 0.5% GVA, as compared to the current period (EEAG 2014-2020). Furthermore, affordable and competitive electricity prices are essential to facilitate the transition to low carbon technologies, which require even larger amounts of electricity.

Amendment 20 - **Conditionality criteria**

~~*365. The Member State must also commit to monitoring that beneficiaries required to conduct an energy audit under Article 8(4) of Directive 2012/27/EU do one or more of the following:*~~

> ~~*(a) implement recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 3 years and that the costs of their investments is proportionate;*~~
>
> ~~*(b) reduce the carbon footprint of their electricity consumption, so as to cover at least 30 % of their electricity consumption from carbon-free sources;*~~

~~*(c) invest a significant share of at least 50 % of the aid amount in projects that lead to substantial reductions of the installation's greenhouse gas emissions; where applicable, the investment should lead to reductions well below the relevant benchmark used for free allocation in the Union ETS.*~~

Justification

Compensation should not be made conditional. If now state aid is made conditional to additional measures to be taken by a company, de facto it is not anymore a (partial) reimbursement of incurred costs as it requires additional costs to the company. Moreover, related proposals do not reflect the specificities of different industrial sectors and of companies and might lead to different and disproportionate outcomes.

<u>Amendment 21</u> – **Applicability**

413. The Commission will apply these guidelines for assessing the compatibility of all notified aid in respect of which it is called upon to take a decision after 1 January 2022. Unlawful aid will be assessed in accordance with the rules applicable at the date on which the aid was awarded

The Commission will take into account the wording of the CEEAG in force at the time of the assessment of the unlawful aid, in so far as this would mean a more favorable assessment in favor of the beneficiary.

Justification

We believe, that the rules of applicability of CEEAG should be stipulated in a clearer manner. Under the current wording we understand that any aid notified prior to 1 January 2022, decision on which is conducted after this date will be governed by the CEEAG, however "unlawful aid will be assessed in accordance with the rules applicable at the date on which the aid was awarded". We believe that this may create legal uncertainty and result into a situation where a subject will have to be compliant with rules that are effectively no longer in force.

The further point has not been reflected in the change of the wording of the draft CEEAG, still we believe an explanation shall be provided in the explanatory note to the CEEAG. Presently the Member states prepare number of measures to support decarbonization including support through public funding, in order to meet the ambitious GHG reduction targets it is necessary that the measures which are not exempted from notification, start the notification procedures as soon as possible, preferably prior validity of CEEAG. This transition period, when the notification process is started in 2021 in respect to procedures, notification documentation and information required in the notification process by the EC should therefore be addressed in more detail.