

Cefic response to the public consultation on the revised Climate, Energy and Environmental Aid Guidelines (CEEAG)

Cefic supports Europe's ambition to become climate neutral by 2050. To achieve this objective, breakthrough technologies and enabling frameworks for the very large investments will be required. The chemical industry already provides low carbon solutions to all other sectors of the European economy, including efficiency solutions to multiple value chains such as the construction sector, and is at the forefront in developing innovative solutions to accelerate the transition to a climate neutral society.

The revised Climate Energy and Environment Aid Guidelines (CEEAG) will play a pivotal role in supporting this transition. Cefic therefore welcomes the possibility to comment on the draft CEEAG.

Please find below a first set of horizontal considerations, followed by comments to specific sections of the CEEAG.

Horizontal considerations

Cefic welcomes the overall approach in broadening the scope of the Guidelines, by:

- supporting most technologies deemed necessary to deliver the Green Deal
- expanding aid to new areas such as circular economy
- increasing flexibility and streamlining rules currently defined in the 2014 Energy and Environment Aid Guidelines, especially when it comes to aid resulting in the combination of different funding streams

Furthermore, we see the need for a much stronger link between state aid and technologies, which reduce the overall CO₂-footprint and/or support the circularity of materials.

Cefic is nevertheless concerned with the impact on regulatory stability, due to the changing rules and the extremely short time given to Member States to eventually adjust existing environmental protection and energy aid schemes. While the current EEAG provisions run until 31/12/2021, the draft CEEAG sets 31/12/2023 as the deadline to eventually adjust ongoing provisions.

Furthermore, **Cefic is concerned about the link with legislative instruments which are still under development. Particularly in relation to taxonomy.** Para 69, for instance, stipulates that "the Commission will pay particular attention to Article 3 of the Regulation 2020/852, including the 'do not significant harm' principle, or other comparable methodologies". Such linkage should be avoided as the taxonomy has another aim. Indeed, it consists of a voluntary classification system aiming at greater transparency for investors.

We believe referring to legal frameworks that are still under development is premature and may result in uncertainty as member states design support schemes.

Lastly, the Guidelines are a good instrument as demonstrated through their use by Member States. However, it is ultimately up to Member States to decide whether, and to what extent, providing state aid. Therefore, **the Guidelines cannot in themselves be regarded as providing EU wide carbon leakage protection.**

In order to build on a level playing field in Europe, Cefic **invites the European Commission to play an active role in ensuring Member States effectively provide state aid**, to the maximum extent allowed by the Guidelines. The Commission could, for instance, regularly report on aid granted, share of best practices, provide training and assistance to national administrations...

Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy (section 4.1)

Cefic supports the proposed new approach, open to most technologies. Reducing GHG emissions requires new innovative solutions. We need a flexible approach to rapidly adapt to technological progresses.

Our industry has already identified a **non-exhaustive list of options to reduce GHG emissions under this section of the CEEAG**: these include energy efficiency improvements, direct use of low-carbon electricity, hydrogen/CO₂-based production routes, alternative synthesis pathways using CO₂, low-carbon chemical production based on biomass as feedstock, valorisation of gaseous emissions and side streams of other sectors (industrial symbiosis), recycling and polymer waste as feedstock.¹

However, **it is important that support for these and other new areas should not be passed on to industrial energy-intensive consumers through additional charges**, who face international competition leading to carbon and investment leakage where there is insufficient carbon leakage protection.

This being said, **there are some areas in which the proposed new wording would have to be further improved**, as it might lead to unclear interpretations, if not even contradictory outcomes. Specifically:

- Paragraph 98, footnote 60, references the Innovation Fund methodology to calculate GHG abatement potential. More details on how this methodology should be applied, especially regarding use of electricity from the grid for hydrogen production, would be helpful.
- Paragraph 99: the requirement to counteract emissions displacement between sectors should not become a barrier to the funding of electrolysis, as it could be seen as diverting green electricity from other uses to hydrogen production.
- Paragraph 100: the reference to emissions reduction “directly resulting from that industrial activity” could be understood to run counter to the preferred life cycle approach. Might be more suitable to remove ‘directly’ or otherwise clarify that this should not counter the general principle of the CEEAG to take a lifecycle approach in assessing emission reductions.
- Paragraphs 71 and 108 suggest measures will not support any fossil fuels, whilst paragraph 110 offers scope for natural gas with CCS. It should be unambiguously clear that support for CCS and hydrogen from natural gas with CCS or from process off-gases with CCS are explicitly allowed under the new CEEAG. Multimodal transport of CO₂ should also be covered and not limited to transport through pipelines.

¹ <https://cefic.org/a-solution-provider-for-sustainability/a-journey-to-sustainability/low-carbon-energy-and-feedstock-for-the-european-chemical-industry-study/>

Concerning competitive bidding, Cefic generally supports the approach but calls for some flexibility in supporting complex projects, characterised by staged and sequenced phases. Projects in the chemical industry are typically complex, evolving in different stages at different timing, and competitive bidding should be designed in a way that allow for these projects to be supported. Specifically, competitive biddings, as specified in paragraph 90, should also allow sufficient design flexibility, in order not to exclude sectors/technologies due to the inherent complexity of these sectors/technologies.

On the question of whether aid should also be provided for **removal of greenhouse gases from the environment**, we are of the opinion that **all forms of carbon captured should be eligible for support.**

Remarks on section 4.11: Aid in the form of reductions from electricity levies for energy-intensive users

Cefic welcomes the decision to confirm this section in the draft CEEAG and we fully subscribe to the arguments used in paragraph 351.² The chemical sector provides the building blocks to decarbonise the whole European economy.

We therefore welcome the confirmation of the chemical industry among the eligible sectors: it is therefore of strategic importance to secure the chemical industry's international competitiveness while transitioning towards climate neutrality.

We nevertheless **noted that industrial gases** in general (NACE 20.11), and **hydrogen production in particular** (20.11.11.50), are no **longer included in the draft list. We'd like to ask the Commission to reconsider this decision**, firstly on the ground that such approach **would distort the level playing field** for producers of those products, depending on whether these gases are produced off-site or on-site (in the latter, they would be accounted under different NACE codes). Secondly, the carbon leakage risk needs to be considered more broadly **taking into account the value chain effects**, including companies active in intermediate elements of the manufacturing value chains.

In the context of securing the chemical industry's international competitiveness, we also do not agree with the proposal to increase the minimum level of contribution for industry from the current 15% to 25% (paragraph 359), and to increase the limit for additional costs from 0.5% to 1.5% of the gross value added (paragraph 360).

The Commission argues such increase in industry's contributions on the basis *that "if the reductions are too high or awarded to too many electricity consumers, the overall funding of support to energy from renewable sources might be threatened and distortions of competition and trade may be particularly high."* (para 353). However, there is no impact assessment included to support this statement by comparing electricity costs of EU installations with their competitors in other regions, or evolutions of trading flows in and out of the EU.

² Para. 351 of the draft CEEAG: "For certain economic sectors which are particularly exposed to international trade and rely heavily on electricity for their value creation, the obligation to pay the full amount of such levies can create a significant additional burden. This burden can heighten a risk of activities in these sectors moving outside the European Union to locations where environmental disciplines are absent or less ambitious. In addition, such levies increase the cost of electricity compared to the cost of direct emissions and can therefore discourage the electrification of production processes, which is central to the successful decarbonisation of the Union economy. To mitigate those risks, Member States can grant reductions from such levies for companies active in the economic sectors concerned."

We find it unjustified to increase the minimum level of contribution for industry, considering that:

- The Commission already reduced the list of eligible sectors by more than 66%
- The proposed change would financially impact industry twice: due to the increased share or costs to be paid, and due to the expected increase in the level of levies.³ This would increase industry's exposure to international competition, thus negatively affecting competitiveness and trade.
- The level of levies varies considerably across member states. As long as these exemptions are based on a percentage of these charges, market distortions will pertain.

Moreover, additional conditions to be eligible for aid should be avoided. In particular, it is not appropriate to introduce a minimum level of levies (EUR/MWh) as a basis for providing aid to eligible sectors, for the following reasons:

- Identifying the hypothetical minimum level at European level would be a challenge: there is no single level of levies across Europe (and often not even with a given country), not across industries, and not even across companies. Any chosen value would be arbitrary. Two equal undertakings would thus be unequally treated.
- It constitutes a regulatory cliff edge: it would be sufficient for the cumulative level of these levies to move by 1 c€/MWh below the threshold to suddenly lose the reduction from electricity levies, thus moving from 15% to 100% of costs to be incurred by companies. This would present considerable uncertainty for investors and a major disincentive for transition investment.

Finally, on the **conditionality criteria in paragraph 365**: we understand the rationale behind the criteria, and the need to ensure consistency. And precisely because of this need of consistency, **we find inappropriate the changes introduced in the CEEAG, compared to the ETS aid guidelines**⁴. Specifically, in the ETS guidelines, undertakings are required to meet one of the listed conditions. In the draft CEEAG, undertakings are required to fulfil "one or more" of the conditions. Should governments opt for more than one condition to be fulfilled, this could make it even more difficult for certain undertakings to achieve these requirements. This is particularly true, for instance, for electro-intensive undertakings that have already made substantial investments to reach/set the ETS benchmark. **We therefore propose to use the same criteria in both the ETS and CEEAG documents.**

Aid for the security of electricity supply (section 4.8)

Point 324 of the CEEAG stipulates the following: "[...] *the costs of a security of supply measure should be borne by the market participant who contribute to the need for the measure. [...]*". The EC aims to specify how the aid must be financed and thus limits the freedom of choice of the Member State as regards the cost pass through of such measure, surpassing the subsidiarity principle anchored in EU law.

³ Para. 350 of draft CEEAG: "... it is likely that Member States will continue to finance such [ambitious decarbonisation] policies through levies and it is therefore possible that those levies may increase."

⁴ Para. 55, Communication from the Commission Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021, 2020/C 317/04

We suggest to amend this sentence as follows: “[...] *the costs of a security of supply measure should, in principle and to the extent that the costs of financing security of supply measures are recovered from market participants, be borne by the market participant who contribute to the need for the measure. [...]*”.

Aid for district heating or cooling (section 4.10)

To ensure consistency of provisions in this section with the EU strategy to meet 2030 and 2050 targets, we suggest point 342 should be amended to include renewable **and low carbon** energy.

Comments on the definitions (section 2.4)

We have concerns with the following definitions:

- Paragraph (14). We are concerned that the definition of ‘carbon capture and use’ would necessarily require the transportation of CO₂. This would exclude the use of CO₂ directly on-site, in the facility that converts or uses the CO₂.

To address this possible shortcoming, we propose to amend the definition:

‘carbon capture and use’ or ‘CCU’ means a set of technologies that captures the CO₂ emitted from industrial plants based on fossil fuels or biomass, including power plants and waste-to-energy plants [or captures it directly from ambient air], and **transforms the CO₂ into materials or fuels** ~~transports it to a CO₂ consumption or utilisation site;~~

- Paragraph (24). We have concerns with the definition of ‘**demonstration project**’ (i.e. *a project demonstrating a technology as a first of its kind in the Union and representing a significant innovation that goes well beyond the commercial state of the art*).

A strict interpretation of the term "first of its kind" would mean that only one project per technology to be scaled up could be recognised as a demonstration project. As well as presenting challenging problems of defining when one technology application is different from another, this will also cut off at source the considerable ‘learning curve’ benefits to be obtained from multiple projects based on a common core technology. We suggest the cumulative demonstration and learning effect should be fully allowed for in this definition.

- Paragraph 30. We see some risks with the definition of ‘**eco-innovation**’, i.e. *all forms of innovative activities, including new production processes, new products or services, and new management and business methods, resulting in or aimed at significantly improving environmental protection and significantly reducing the environmental impacts of pollution. For the purposes of this definition, the following are not considered innovations: [...]*.

The cumulative condition of (i) improvement of environmental protection and (ii) impact on pollution leads to a very narrow definition. As a result, much of what is currently considered as “eco-innovation” would no longer qualify.

Reducing the environmental impact as such should be sufficient. Moreover, environmental impact should be interpreted in a sufficiently broad manner to allow all demonstrable environmental benefits (e.g. CO₂ emissions reduction and avoidance, resource efficiency, sustainable products with reduced impact on people and environment, etc.)

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About Cefic

Cefic, the European Chemical Industry Council, founded in 1972, is the voice of large, medium and small chemical companies across Europe, which provide 1.1 million jobs and account for 15% of world chemicals production.