Swedish Gas Association

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Swedish Gas Association (Energigas Sverige) answer to public consultation on the revised Climate, Energy and Environmental Aid Guidelines (CEEAG)

1.1 Introduction

It is important that legislations help and not risk hindering the EU Member States to reach energy, environmental and climate goals. In this respect, properly designed state aid rules are crucial. The Swedish Gas Association welcomes the public consultation on the Climate, Energy and Environmental Aid Guidelines (CEEAG), but would like to bring forward some important aspects in this context.

In this answer from the Swedish Gas Association, EEAG is used as an abbreviation for the current Guidelines on State aid for environmental protection and energy 2014-2020 (2014/C 200/01), and CEEAG mean the proposed draft Guidelines on State aid for climate, environmental protection and energy 2022. These abbreviations are used throughout the following texts.

1.2 Biogas and other renewable gases contribute to achieving society's environmental and climate goals

The Swedish Gas Association also want to take this opportunity to write a few words about biogas. There are many reasons to support the production and use of biogas. Biogas can be produced from residues and waste, which is the case for nearly all biogas on the Swedish market. Biogas is a climate-smart biofuel, but it also fulfils many other social benefits. Biogas is a unique asset for society - and more important than ever. In practice, biogas is a circular economy, where waste produced by the community is transformed into renewable energy and biofertilizer. At the same time, biogas contributes to achieving society's environmental and climate goals. Security of supply, jobs and growth are other important socio-economic benefits. Biogas is an established energy product with the potential to form an important part in the renewable energy mix. Increased production of biogas and biofertilizer provides many benefits to society within the framework of circular economy. At a summit held on 25 September 2015, the UN decided on Agenda 2030 with its 17 global goals, balancing the three dimensions of sustainable development: economic, social and environmental. Biogas contributes, directly or indirectly to all 17 goals.

In order to optimise the use of biogas as a resource, long-term instruments are required in order to promote both increased demand and increased production of biogas and biofertilizer. The list of the social benefits from biogas can be made long, but biogas is also a fuel with special needs. It is of the utmost importance that biogas can be tax-exempt without risking overcompensation. The current opportunity for member states to tax-exempt biogas and bio-LPG nationally should remain. It is also important to remember that if natural gas or LPG loses its competitiveness, also the market for biogas and bio-LPG will likely decrease substantially or even disappear.

1.3 The state aid rules should be flexible and technology neutral

Achieving climate neutrality by 2050 requires technology neutral state aid rules to truly facilitate a situation where state aid can create the correct incentives at the right moment. The Swedish Gas Association believes that all renewable alternatives will be needed to fight the climate change and reach the climate goals. We therefore consider it unfortunate that the proposed CEEAG so clearly select and favour one technology over the other, which is what the Commission does when favouring mobility and recharging or refuelling infrastructure for zero-emission and clean transport vehicles. When too much attention is paid to electrification of transports, there is a risk that too little attention is paid to other alternative technologies, such as for example biogas used for transport.

The Swedish Gas Association therefore consider it important to ensure that the EU state aid rules are as flexible and technology neutral as possible to ensure necessary flexibility to allow member states to introduce the correct incentive for a specific product, technology, or process at the right time.

1.1 About Chapter 2.2 Aid measures covered by these guidelines

We support the list of categories in point 15. We do however strongly oppose the definitions of “clean transport vehicle”, ruling out state aid for biomethane (and other sustainable advanced biofuels) for mobility. Please see our comments about chapter 2.4 below for further information.

1.2 About Chapter 2.4 Definitions

1.2.1 Point 18 (8) Biogas

The Swedish Gas Associations notes that many of the definitions in the draft CEEAG relates to 2018/2001/EU[1]. The EU-Commission has announced that a proposal of a revised directive 2018/2001/EU will be published in the frame of the legislation package “Fit for 55”. It is therefore difficult to assess if the definitions used in chapter 2.4 in the draft CEEAG in suitable and comprehensive. Among other things we would like to mention that in the current 2018/2001/EU the definition Biogas include all gasous fuels produced from biomass, thus also bio-LPG and hydrogen produced from biomass. If this definition changes in the revision of Directive 2018/2001/EU it is important that all gasous fuels produced from biomass will be included in the CEEAG in a clear way.

1.2.1 Point 18 (20) Clean transport vehicle

The draft definitions of clean transport vehicle are predominantly based on direct (tailpipe) CO_2 emissions, with only a few limited short-term exemptions for some transport modes. We strongly oppose this approach.

[1] Directive 2018/2001/EU of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources

The tailpipe approach is in sharp contrast to the scientific findings of for example the JRC, the European Commission's science service providing evidence-based support to the policy making process (https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/jec-well-wheels-report-v5). The JRC studies argue that greenhouse gas emissions are associated with both fuel production and vehicle use; hence it is only by considering the whole pathway (Well-To-Wheels, WTW) that the overall impact of fuel and vehicle choices can be seen.

Hence, all EU policies (including state aid regulation) should define clean transport vehicles based on WTW CO_2 emissions or, when possible, even life cycle analysis (LCA).

The CEEAG should recognize that the EU has expressed an ambition to move towards the more technology neutral WTW (or LCA) approach. Below are some exact wordings from recently revised EU directives and regulations, expressing that ambition.

Directive on the promotion of clean and energy-efficient road transport vehicles, Directive (EU) 2019/1161: *"The Commission should also assess, inter alia, the possibility of aligning this Directive to any methodology for counting life-cycle CO_2 emissions and well-to-wheel CO_2 emissions developed in the context of EU vehicle CO_2 emission performance standards […]"*

CO_2 emission performance standards for new heavy duty vehicles, Regulation (EU) 2019/1242: *"By 31 December 2022, the Commission shall submit a report to the European Parliament and to the Council […] The report referred to in paragraph 1 of this Article shall also, in particular, include the following: […] An assessment of the possibility of developing a specific methodology to include the potential contribution to CO_2 emissions reductions of the use of synthetic and advanced alternative liquid and gaseous renewable fuels […]"*

CO_2 emission performance standards for new passenger cars and for new light commercial vehicles, Regulation (EU) 2019/631: *"The Commission shall no later than 2023 evaluate the possibility of developing a common Union methodology for the assessment and the consistent data reporting of the full life cycle CO_2 emissions of passenger cars and light commercial vehicles that are placed on the Union market. The Commission shall submit to the European Parliament and to the Council that evaluation, including, where appropriate, proposals for follow-up measures, such as legislative proposals."*

The absence of WTW or LCA approach does not provide with the real performance of mobility solutions in terms of GHG emission reductions. This creates an uneven playing field where so called 'zero emission' options (tailpipe) are systematically considered as sustainable, independently from the origin of the energy production and emissions related to battery production.

The JRC studies also conclude that, from all combinations of fuel/energy carriers and powertrains explored, biomethane represents one of the absolute lowest greenhouse gas intensive routes. The climate benefits of using biomethane are, according to the study, similar to the use of renewable electricity. Even significant negative emissions can be derived from routes involving biogas or biomethane from manure.

The draft definitions of "clean transport vehicle" based on direct (tailpipe) CO_2 emissions will however hamper any efforts to advance biogas for mobility. Hence the draft proposal is clearly not in line with the overall political and legal framework that recognizes the important role of biogas in sector integration, circular economy, decarbonization of transport and other sectors, reducing methane emissions in agriculture and waste management.

1.2.2 Point 18 (27) Distribution system operator and point 74 Transmission system operator

The Swedish Gas Association would also like to pay attention to that the definition of Distribution system operator (DSO) in point 27 and the definition of Transmission system operator (TSO) in point 74 refers to Directive (EU) 2019/944 of the European Parliament and of the Council. But that directive only concerns rules for the internal market for electricity. In order for these definitions to also include DSO and TSO for gas systems, reference needs to be made to the corresponding legislation for the gas market.

1.2.3 Point 18 (35 b) Energy infrastructure concerning gas

Further point 35 b (i) need to be clarified. It is not clear which pipelines that are intended to be excluded from the definition of energy infrastructure. The wording about high pressure pipelines that are used upstream is not clear to us.

Point 35 b (ii) need to be clarified. Does it refer to the high pressure pipelines that is mentioned in 35 b (i)? If so, does it mean that underground storage connected to that kind of high pressure pipelines also is excluded from the definition of energy infrastructure?

Point 35 b iii is written “reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) or compressed natural gas (CNG);” In this point also liquified biogas (bio-LNG) and compressed biogas (bio-CBG) should be included. This because the same energy infrastructure is used for both biogas and natural gas. A well-developed infrastructure for gas favours the transition to renewable gas.

Point 35 b, c & d (iv) are similarly worded for gas, hydrogen and CO_2. But for CO_2 and also for electrification ((a (ii)) it is clarified that protection, monitoring and control systems are included. For gas and hydrogen these systems are not highlighted explicitly. It needs to be clarified if these systems are included in the definition for gas and hydrogen.

1.2.4 Point 18(59) Refuelling infrastructure

The definition of refuelling infrastructure is referring to clean or zero transport vehicles. This unfortunate tailpipe approach will rule out state aid for construction, installation, and the upgrade of biomethane refuelling infrastructure for road transport, please see further information under our comments about 18 (20) above.

1.3 About environmental taxes

Due to the special characteristics of environmental taxes, they merit special consideration when dealing with state aid implications that may arise from their application. State aid rules need to adequately support environmental tax design which contributes to phasing out fossil fuels, while stimulating the development and deployment of renewable fuels.

1.3.1 How does chapter 4.7 Aid in the form of reductions in taxes or parafiscal levies relate to chapter 4.1 Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy?

Tax exemption for sustainable biofuels and other biomass fuels, as biogas and sustainable bio-LPG, create a higher demand for such fuels. Biogas and bio-LPG replaces fossil fuels in industry, CHP-plants, transport and shipping. The demand leads to the required investments for dedicated vehicles and the infrastructure for biogas and bio-LPG, enabling the transition towards fossil free society. The Swedish Gas Association are convinced that this is necessary to reach the climate goals.

So far, the Commission has decided that Chapter 3.3 Aid to energy from renewable sources of the EEAG is to be used also when assessing aid cases regarding aid to biogas and bio-LPG in the form of reductions in environmental taxes under Directive 2003/96/EC, instead of Chapter 3.7 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.

The Swedish Gas Association asks for clarification about if chapter 4.1 Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy, or chapter 4.7 Aid in the form of reductions in taxes or parafiscal levies (both chapters in the proposed CEEAG), are to be used for the tax exemption for biogas and bio-LPG.

1.3.2 The possibility to fully tax-exempt sustainable biofuels and other biomass fuels, such as biogas and sustainable bio-LPG, need to be clarified

If the Commission makes the assessment that the tax exemption for sustainable biofuels and other biomass fuels, such as biogas and sustainable bio-LPG, are to be treated according to chapter 4.7 CEEAG instead of chapter 4.1 CEEAG, it is of utmost importance that the possibility to give full tax exemption, when necessary, to replace fossil fuels with biogas or bio-LPG, is clearly stated.

We interpret chapter 4.7 as that at least 20 percent of the national environmental tax must be paid for the aid to be considered as proportionate. The Swedish Gas Association strongly opposes to that. The production costs for biogas and bio-LPG are still much higher than the costs for their fossil counterparts, and a full tax exemption are needed for biogas and bio-LPG to contribute to the climate goals.

1.3.3 Clarification is needed about how to verify that the measure is still necessary – especially for aid in the form of tax reduction when the fuel is not subject for quota or supply obligation

Whether the tax exemption for biogas and bio-LPG will be treated according to chapter 4.7 CEEAG or chapter 4.1 CEEAG, it needs to be clarified how overcompensation should be counted (annual monitoring mechanism to verify that the measure is still necessary). Point 96 in CEEAG states that when aid is granted in the form of operating aid or a tax reduction to support biofuels, bioliquids or biogas, and there is a quota or supply obligation which effectively sets a separate market price for biofuels, the aid amount must not exceed the difference between their production costs and that market price. Production costs may include a reasonable profit. But the Swedish Gas Association fails to find any information about how overcompensation is defined when the tax exempted fuel is not subject to any quota or supply obligation, like the case for biogas in Sweden.

1.3.4 Lower tax rate for sectors with risk of carbon leakage – important to keep the currant possibility that aid in the form of tax reductions is necessary and proportional if the minimum tax levels in 2003/96/EC are respected

The possibility to have differentiated tax rates addressing the risk of carbon leakage is very important to keep the possibility to use environmental taxes as a tool to reach the climate goals.

In Sweden, we apply higher energy tax on electricity used by companies in the service sector compared to industrial enterprises. The energy tax on electricity used in our industry is not low, we do respect the minimum tax levels in 2003/96/EC, but the energy tax on electricity used in the service sector is high. This is a good example of when a low tax level for certain enterprises is a prerequisite for applying a significantly higher tax level for other kinds of business. But state aid is considered to be given to the industry when the service sector is taxed on a higher level. A prerequisite for the higher tax rate, which is important due to environmental protection, is the

possibility to apply a lower tax level for certain other enterprises. This is a common concept when designing a well-functioning environmental tax policy and needs to be maintained.

In p. 173 in EEAG it is stated that 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. But chapter 4.7 Aid in the form of reductions in taxes or parafiscal levies, in the proposed CEEAG, does not mention anything about harmonised taxes or the minimum tax rates in the 2003/96/EC. There is a definition (p. 77) that defines 'Union minimum tax level' as the minimum level of taxation provided for in Union law. With respect to energy products and electricity, it means the minimum level of taxation laid down in Annex I to Council Directive 2003/96/EC. But unfortunately, the definition is not used in anywhere in the proposed CCAG, at least not as far as we can see.

If this means that all state aid in the form of reductions in taxes according to chapter 4.7 in CEEAG need to be treated in the same way, regardless of if the minimum tax rates in 2003/96/EC are respected or not, and if it means that aid beneficiaries pay at least 20 percent of the national environmental tax, the Swedish Gas Association strongly opposes to it. The Swedish Gas Association would like to emphasise the need to maintain the provisions in Points 167 to 175 EEAG and the corresponding provisions in Article 44 GBER in combination with Article 6(5)(e) GBER for aid in the form of tax reductions and exemptions from taxation according to the Energy Taxation Directive.

1.4 About Chapter 4.3 aid for clean mobility

1.4.1 Scope and activities supported

We agree with the scope and activities supported which are listed in point 140 and 141. We do however strongly oppose the definitions of "clean transport vehicle", ruling out state aid for biomethane (and other sustainable advanced biofuels) for mobility. Please see comments to Chapter 2.4 Definitions above for further comments.

We agree with the scope and activities supported which are listed in point 169 and 170. Here, once again, we must strongly oppose the definitions of "clean transport vehicle" as the definition of refuelling infrastructure is referring to. This unfortunate tailpipe approach will rule out state aid for construction, installation, and the upgrade of biomethane refuelling infrastructure for road transport.

Please see Chapter 2.4 above for further comments on the definition of "clean transport vehicle".

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

We do not agree with point 161 pointing out gas-fuelled transport vehicles, in particular, as aggravating negative environmental externalities in the longer run, compared to alternative investments.

Both gas-fuelled and electric vehicles can be powered by either fossil or renewable energy. The statement in point 161 is just as valid for electric vehicles as for gas-fuelled vehicles. It all depends on the energy used – fossil or renewable. Hence the point is misleading.

Point 162 is however *very important* to maintain, if the definition of "clean transport vehicle" is to be based on direct tailpipe CO_2 emissions (as suggested in the draft in Chapter 2.4). Point 162 opens the possibility to support investments in biomethane for mobility.

In particular, the following wording is very important to maintain:
"The aid may also be regarded as not having lock-in effects or displacing investments into cleaner technologies where the Member State commits to ensure that those vehicles would be operated using blending of biogas or renewable gaseous transport fuels of non-biological origin (minimum 20%)."

The wording above is fully in line with the overall political and legal framework that recognizes the important role of biogas and biomethane in sector integration, circular economy, decarbonization of transport and other sectors, reducing methane emissions in agriculture and waste management. The wording is crucial for the continued development and expansion of the biomethane sector in Europe.

Further, we do not agree with point 184 pointing out investments in gas infrastructure, in particular, as creating long-term lock-in effects and displacing investments into cleaner technologies. Both gas and electricity infrastructure can be used to distribute either fossil or renewable energy to the market. The statement in point 184 is just as valid for recharging infrastructure as for gas infrastructure. The infrastructure itself is not fossil, It is the energy that is distributed through the infrastructure that might be fossil or renewable. Refuelling infrastructure for liquified or compressed gas can be used for natural gas, biogas or a blending of natural gas and biogas. Hence the paragraph is misleading and should therefore be removed.

Point 185 is however *very important* to maintain, if the definition of "clean transport vehicle" is to be based on direct tailpipe CO_2 emissions (as suggested in the draft in Chapter 2.4). The paragraph 185 opens the possibility to support the deployment of biomethane refuelling infrastructure.

In particular, the following wording is very important to maintain:
"Aid for the deployment or upgrade of CNG and LNG refuelling infrastructure may also be regarded as not creating long-term lock-in effects where the Member State commits to ensure that the CNG and LNG is blended with biogas or renewable gaseous transport fuels of non-biological origin (minimum 20%)."

The wording above is fully in line with the overall political and legal framework that recognizes the important role of biogas and biomethane in sector integration, circular economy, decarbonization of transport and other sectors, reducing methane emissions in agriculture and waste management. The wording is crucial for the continued development and expansion of the biomethane sector in Europe.

1.5 About Chapter 4.4 Aid for resource efficiency and for supporting the transition towards a circular

According to point 192 aid may be granted for investments improving resource efficiency through the replacement of primary raw materials or feedstock with secondary (re-used or recycled) raw materials or feedstock. It should be clarified if raw material that has been produced from waste or residues, like biogas, are covered by the possibility of providing support under this section.

1.6 About Chapter 4.9 Aid for energy infrastructure

Regarding point 333 a, the Swedish Gas Association would like to highlight that the wording risks to hinder and exclude small countries where there simply isn´t room for more than one player. This is because it is not economically replicable to have parallel systems, which leads to natural

monopoly in the market. If the wording in point 333 means that these small countries are excluded from state aid to energy infrastructure, it could be discriminatory. For example, to build a “hydrogen backbone” through Sweden (like have been done for infrastructure for electricity) would be associated with very large investments. If such a hydrogen backbone shall be reality state aid is likely to be required. Rules that do not allow states aid to such expansion of the energy infrastructure would prevent, rather than enable, the transition to a fossil-free society.

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