

Updating the EEAG to the CEEAG

Regarding: Communication from the Commission on ‘Guidelines on State aid for climate, environmental protection and energy 2022’ (CEEAG)

From: VNO-NCW (Dutch association of employers, representing the industrial sector in the Netherlands)

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Dutch business and industry strongly support the European ambition to become climate neutral by 2050. The industry is at the forefront in developing innovative solutions and new sustainable value chains to accelerate the transition to a climate neutral society.

That 2050-ambition cannot be realized by incremental improvements only, but will take huge systemic changes for large industrial companies to achieve the emission reductions in the foreseen (narrow) timeframe. Such changes are unique for every company and sector and, for the larger part, will be unprecedented and thus very challenging. It is this revolutionary character of that transition that European industry will need to make, that we should be all aware of in supporting that transition via policy instruments.

At heart, that transition means the process going from current technologies to new ones. The real costs of emissions are not included in the current technologies and as a consequence business cases of implementing such new technologies are not yet profitable, therefore requiring government aid and incentives. Fitting state aid rules can thus play an important role to make the green transition to a success. At the same time, we appreciate the need of state aid rules to protect a level playing field on the EU internal market. Therefore, we welcome the European Commission (‘Commission’) initiative to update the EEAG to the Guidelines on State aid for climate, environmental protection and energy 2022 (hereafter: the ‘**Guidelines**’), so that they are supportive in achieving our common climate neutrality goals.

In that regard, VNO-NCW highlights:

1. **Ensure that the guidelines are well equipped for tailor-made practical solutions.** The measures that are necessary for industry to take in order to make the transition, vary widely per sector and even company. For state aid rules to play a supporting role therein, the procedural application in national aid schemes should not be rigid, but rather take a holistic approach. Of course, within the firm boundaries of the rules guarding fair competition within a European level playing field.
2. In light thereof, we suggest to the Commission **to list good practices** of support schemes which are allowed within the framework of the Guidelines. Such guidance can help companies, trade associations and national governments to learn from each other, promote speeding up procedures (not having to reinvent the wheel) and contribute to safeguarding a level playing field (e.g., which pro-competitive safeguards are in place). In addition, for even more clarity, we ask the Commission to consider to support such good practices **by providing analytical grids**, reflecting

the rules and decisional practice at that point in time to help guide decision makers (compare e.g. ‘Analytical Grids on the application of State aid rules to the financing of infrastructure projects’).

3. **Clarify the extension of the scope of the Guidelines in order to indeed capture *all* technologies that can deliver the Green Deal.** More in particular, this concerns clarification of paragraph 4.1 in a way to ensure that it includes support for a broad spectrum of circular economy initiatives, including scope 3 emissions. In this respect the application of the term ‘direct emissions’ needs clarification and - where relevant - reconsideration (marginals #98 - #100, section 4.4).
4. **Bundle and handle relevant state aid proposals coherently.** The Guidelines are one of multiple means for national governments to support the delivery of our common climate ambitions. Within the state aid framework there are many roads leading to Rome. For example, also the upcoming update of the General Block Exemption Regulation (GBER) will be very relevant in light of the energy transition in European industry. Any expansion of the GBER-scope could take pressure off the Guidelines; with the advantage of granting state aid via the relatively quick procedure under the GBER. We thus emphasize that it is important to approach and update such rules, regulations and guidelines in a coherent manner and ask the Commission to use the stakeholder input received in this consultation also in upcoming rule-updating exercises.

In addition to the above, please find additional detailed input on the draft Guidelines attached in Annex hereunder.

ANNEX

Guidance

Costs and good practices

In addition to investments in CO₂-reduction measures (CAPEX), operational costs (OPEX) are much better connected to the practice of implementing transition measures and it is in line with subsidizing the transition path towards 2030. In this context, we see the SDE++ subsidy scheme in the Netherlands as a good practice. We recommend the Commission to list good practices of schemes applied throughout the European Union, that fit in the intentions of state aid to support the realization of the climate objectives.

In allowing state aid, it should be core that CO₂-emissions effectively and efficiently are reduced across the total adapted system by implementing a measure. In order to realize viable business cases and reach investment decisions, it should be possible to cover 100 percent of the ‘unprofitable top’ of projects’ business cases, including infrastructure when needed and including system costs (for example grid tariffs or costs from maintaining system balance).

Interpretation of the rules, analytical grids.

We would like to suggest to the Commission to create further guidance regarding the interpretation and application of the Guidelines. We appreciate that the use of analytical grids can be greatly supportive in terms of clarity and predictability. Guidance is important, especially where in the assessment (#5) both positive (#24-26) and negative (#33-41) externalities / developments must be weighed. Some examples:

- Combined Heat and Power plants (CHP) on natural gas, where emissions arise (negative) and emissions are avoided (positive) when that CHP replaces a coal or lignite powered plant;
- Considerations in case of unclear or incomplete costs of pollution and/or insufficient incentive to act;
- Considerations how to deal with situations where party A invests and party B enjoys the advantage (residual heat exchange, EsCo constructions, CO₂-supply, scope 3 measures);
- Assessment of possibilities for integrated solutions. Example: Wind-at-sea combined with hydrogen electrolysis. We support the suggestion that the methodology for determining CO₂-reduction from the Innovation Fund is used (footnote 60, page 42);
- Competitive bidding is standard. However, how is this precondition applied where in a Member State only one specific producer is active and emitting Mton’s of CO₂, where that producer is exposed to serious competition within the EU? Excluding such company from support could mean that an emission reduction project (including scope 3, for example) does not lead to a business case and hence a relevant CO₂-reduction;
- In addition to the electrification solutions (e-boiler, heat pump, and hydrogen produced via electrolysis), Carbon Capture and Storage (CCS) is of great importance in the transition period, as is Carbon Capture Utilization (CCU). The wording in the Guidelines on CCS and CCU seems sharply formulated and needs additional guidance for clarification and reasoning purposes. It should be unambiguously clear that support for CCS or hydrogen from natural gas with CCS (blue hydrogen) is explicitly allowed under the new Guidelines. This also applies to biofuels, bioliquids, biogas, biomass (marginal #76).

- Operating hours and emission factors for electricity: if applied, the expected emission factor in the last year of granted support (subsidy) should be used instead of the energy mix in the year before application (n-1). Member States should have the flexibility to support electrification technologies resulting in GHG-emission reduction within a reasonable timeframe. Operating hours and emission factors for electricity: if applied, it is preferred to use the expected factor in the last year of granted support (subsidy) instead of the energy mix in the year before application (n-1).

Scope

We welcome the broadening of the scope of the Guidelines, as it provides possibilities to scale up and implement new technologies which allow to reduce emissions and realise a circular economy.

However, we highlight that in some cases it will also lead to a higher complexity regarding scope 1 (industrial chimney), 2 (chimney energy producer) and 3 (raw material extraction and product use) emissions. Especially since these different scopes are linked through product value chains. In this regard we note that paragraph 1.4 can use more elaboration.

Furthermore, we have questions regarding section 4.4 and the term 'directly' (e.g., it is currently unclear what the Commission regards to be 'direct', for instance regarding non-circularity and support for reducing scope 2 and 3 emissions):

- In the existing framework there are many obstructive rules regarding circularity, for example when it comes to waste from abroad that can be circularly reprocessed in a Member State into new products. Specifically for circular production, it is key for EU industry that (geographical) market barriers are removed; the assessment eligibility of projects should not stop national borders. The free movement of goods and trade within the internal market is thus a key aspect for a circular economy.
- In this respect, we advocate a pragmatic value chain approach, as the application of rules often proves difficult in practice. For example: the pyrolysis of imported plastic waste, where the resulting pyrolysis-oil is used as a cracker feed to replace fossil naphtha. Perceived issues therein are: the use of mass balance certification with full attribution of plastic waste volumes diverted from landfill/incineration, in line with globally recognized platforms e.g. ISCC PLUS, cross-border transport, the circularity level of the pyrolysis process when the pyrolysis-oil is processed as an alternative feedstock, and potentially lowering emissions/life cycle impacts;
- Increasing attention should be given to the value chain, overarching the technology, the industrial site gate and even the national border: where in the value chain does which advantage land? Also, in industry new technologies are embedded in the line-up of a production chain; it concerns 'total solutions' and we should be aware that such solutions are not a 'plug-and-play refrigerator that you plug into the socket'.
- Calculation of CO₂-benefit: footnote 60 in marginal 98 refers to the Innovation Fund, which allows to calculate with zero emissions from electricity regardless of the national mix. However, it is unclear if this is applicable for hydrogen production from electricity. Marginal #99 quotes: "To deliver positive environmental effects in relation to decarbonisation, the aid must not merely displace the emissions from one sector to another and must deliver overall greenhouse gas emissions reductions." This marginal seems to block subsidies for electrolysis on the grounds that additional renewable electricity is (temporarily) withdrawn, leading to a temporary increase in emissions;
- Marginal #100: "... aid for the decarbonisation of industrial activities must reduce the emissions directly resulting from that industrial activity." This seems very strict, with scope 3 - and perhaps 2 - emission reduction appearing to be excluded from support. We call for

clarification of paragraphs 99/100, in particular a clarification of "reduce emissions directly resulting from that industrial activity." We should argue that Member States should have the scope to encourage electrification if the CO₂-reduction is demonstrably achieved within a reasonable period of time and if additionality is also demonstrably guaranteed within a reasonable period of time. One should look at whether a technology is future-proof. A transition period must be accepted. The EU has accepted and embraced this in the mobility sector, so why not in the industrial sector. Therefore the word 'direct' should be deleted or that there should be an explanation of #100 that takes into account the comments above.

Where we welcome the broadening of the scope of the Guidelines, we have some concerns regarding the number of safeguards. It will become important how to strike a healthy (administrative, cost, effort) balance between safeguarding on the one hand and keeping it practical and workable on the other, including the lead time of reviews and assessments.

Energy Intensive Industry

Paragraph 4.11 regarding the Energy Intensive Industry is important, not only for the industry using large amounts of energy, but also providing the sustainable solutions of the future. In that respect we have a number of remarks:

- We support the inclusion of new instruments such as 'carbon contracts for difference';
- Trade intensity and electro-intensity rates have deteriorated. We have concerns regarding the level of aid: the 25 percent cost level and 1.5 percent Gross Added Value (GVA):
 - 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. This would increase industry's exposure to international competition, thus negatively affecting trade;
 - It is irrelevant from the perspective of distortion of competition on EU level. That's because the level of levies varies across member states. As long as these exemptions are based on a percentage of an amount, market distortions will pertain;
- We are concerned that the industrial gases sector (e.g. hydrogen, oxygen, nitrogen and argon) has been removed from the list of sectors eligible for reductions in electricity taxes for energy intensive users (Annex 1). NACE code 20.11 sector is currently part of Annex 3 of the Guidelines (EEAG, 2014-2020) and thus reduces the negative impact of rising electricity costs on the competitiveness of European industry. We advocate maintaining this status and including the IG sector in Annex 1 to Guidelines for the following reasons:
 - The Industrial Gases (IG) sector is an enabler of the EU climate agenda, and its products are already critical to the decarbonisation of hard-to-abate sectors. The sector is combining production for multiple heavy industry end-users, achieving economies of scale and reducing emissions;
 - As the Guidelines propose that the IG-sector is no longer eligible for aforementioned reductions in electricity taxes, but IG end-users remain eligible according to Annex 1, this would seriously jeopardize the IG-sector's ability to compete on a level playing field with IG end-users;
 - Outsourcing of industrial gases ensures the highest possible safety and efficiency standards, so a level playing field between outsourced and insourced industrial gases should be safeguarded;
 - Without aid for energy intensive users (EIU), higher costs for industrial gases will have a negative impact on EU competitiveness at global trade and industrial value chains;

- Therefore, maintaining a level playing field between the IG-sector and IG-end-users (as defined in Annex 1) remains essential.

In view of the electrification options for industry, we are happy to see that paragraph 4.8 provides for possibilities for system costs of electricity in the form of balancing costs related to safeguarding security of supply (matching supply and demand at any time).

Green hydrogen

The Guidelines should support activities that contribute to the rapid deployment of the hydrogen economy and support the achievement of national and European climate objectives, including the production of renewable hydrogen from imported ammonia.

The proposal emphasizes electric cars and charging points, while clean transport also includes other sustainable technologies. A technology-neutral approach is needed so that, for example, hydrogen in mobility can also receive State aid more easily from Member States.

Tax measures

We welcome the continuation of the possibility of continuing tax measures (exemptions, early depreciation, etc.).