

Main comments on the draft CEEAG steel industry association (CZ)

○ Paragraph 359 and 360

State aid intensity for reductions, which is limited at 75% in the draft CEEAG, should be **maintained at 85%** as in case of phase 2013-2020. Furthermore, protection for the most exposed undertakings should be maintained at the level of **0.5% GVA**, instead of the proposed 1.5% GVA.

Rationale:

*These types of the state aid measures can help to ensure competitiveness of EIs 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. Unfortunately, the EC's proposals substantially weaken those protective provisions by **lowering the allowed state intensity from 85% to 75%** (paragraph 359) and reducing protection to the **most exposed undertakings** by increasing the threshold of mandatory contributions from **0.5% to 1.5% GVA**. We consider this as very risky step as the next ten years will be crucial for industrial transition which will be mainly based on direct or indirect (e.g. hydrogen) electrification of its processes and with innovations. The contribution of the industry to the achievement of the EU Green Deal through renewable levies will grow exponentially with the update of the new technologies. With the above proposals, EIs would face the imminent risk of losing market shares to competitors in third countries where no comparable climate protection measures are in place or where such exemptions are provided. For the upcoming transition period it is more than crucial to limit the levies applied the EU industry as much as possible to protect their competitiveness and to enable use of its sources to further transformation projects.*

○ Paragraph 357 and related Annex I:

The proposed eligibility criteria should include the option of 4% trade intensity and 20% electro-intensity that was present in the previous guidelines. Due to this absence and application of a set of conditionality criteria to the granting of aid (paragraph 356 and 364), the list of eligible sectors **excludes e.g. the industrial gases (NACE code 2011) – e.g. hydrogen and oxygen - from the scope of application of the reductions**. However, industrial gases are an integral part of some EIs value chains today (such as steel), and will be even more crucial for the transition to low carbon technologies in the nearest future.

Rationale:

In addition to direct electricity consumption, the steel sector uses significant amounts of industrial gases (NACE code 2011) for unavoidable purposes such as oxygen which have an important electricity consumption embedded. The new combined eligibility criteria exclude the option of at least 20% of electro-intensity and at least 4% that was applied until 2020. Due to that, the list of eligible sectors exclude the industrial gases – e.g. hydrogen and oxygen - from the scope of application of the reductions. The lack of compensation for the electricity consumption related to industrial gases would substantially expose the steel sector to carbon leakage risk. 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, as these will require

large consumption of industrial gases like hydrogen. The industrial gases sector should thus remain eligible for compensation under the CEEAG and the proposed criteria should include again the option 20% electro-intensity and 4% trade intensity.

With the above proposals, EIs would face the imminent risk of losing market shares to competitors in third countries where no comparable climate protection measures are in place or where such exemptions are provided.

○ **Paragraph 365:**

Compensation should not be made conditional on additional requirements.

Rationale

*This kind of state aid aims at reimbursing partially the energy consuming sectors for the costs of the climate and energy policies passed on in the energy bill. Once the state aid is made conditional to additional measures to be taken by the company (i.e. investments in energy efficiency or emission reductions and carbon free power purchase agreement,) **it is not anymore a (partial) reimbursement of incurred costs since it requires additional expenditure to the company.** As the eligible sectors are acknowledged as being at risk of carbon leakage (on the basis of market characteristics, profit margins and abatement potential), the **missed reimbursement would create the conditions for the materialisation of such risk**, leading to an increase in global emissions.*

Furthermore, the proposed conditionality requirements are actually linked to the implementation and enforcement of other pieces of legislation (notably the Energy Efficiency Directive and the Renewable Energy Directive). However, Member States retain the possibility of adopting different instruments to promote energy efficiency and renewables in order to achieve the targets set in such legislation. Therefore, the conditionality requirements would overlap and possibly collide with different national measures. Moreover, related proposals do not reflect the specificities of different industrial sectors and of companies and might lead to different and disproportionate outcomes (paragraphs 356, 364 and 365).

○ **Aid for the reduction and removal of greenhouse gas emissions**

Carbon Contracts for Difference need to cover the full abatement costs of the new low-carbon processes.

Rationale:

This is the only way to create a concrete business case ensuring that projects on low-carbon production (such as low-carbon steel) are implemented. An improper design could otherwise result in a CCfD that would fail to make low-carbon production process economically viable. Effective CCfD is of utmost importance in the lack of a global-level playing field compared to third countries where steel production is not subject to similar CO₂ costs constraint as production in the EU. This is particularly true for materials such as steel where the pass-through of unilateral regulatory costs is not possible due to fierce international competition, as also confirmed by the low profit margins registered by the European sector. Therefore, an effective CCfD necessitates aid at the level of 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. A CCfD that compensates only for the difference with the EU ETS price would fail to provide sufficient incentives in high-risk investment in low-carbon technologies since they would remain exposed to international competition not subject to any carbon constraints. The strike price in a CCfD should cover the full cost-difference of the transformation, including operational costs and the additional investment costs (i.e. financial services for interest and depreciation), if funds for the latter are not made available under different funding instruments. It must be ensured under State Aid law that different instruments can be combined.

- **Support for the use of electricity made from renewable energy sources in energy-intensive production processes**

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.

- **Missing aid – dismantling CO₂ intensive installations**

Current state aid rules under the EEAG do not envisage aid for dismantling of CO₂ intensive installations, while 100% aid intensity is possible for the remediation of contaminated sites. Granting of aid for dismantling CO₂ intensive installations after transformation to low carbon production should be allowed under the revised state aid rules, with a level of 100% aid intensity similarly to aid for remediation of contaminated sites.

- **Missing aid – brownfields**

We miss aid for brownfields, not only in CEEAG but also in GBER. Aid exists for the remediation of contaminated sites, for the rehabilitation of natural habitats and ecosystems and for biodiversity and nature-based solutions in the CEEAG.

However, not every brownfield is a contaminated site.

It is possible to support investment in the brownfield under individual articles in CEEAG depending on what the main part of the investment is focused on. *We assume that this will be most often under the Chapter 4.1 Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy.* However, **there are two points, based on which we would like to explain that support for brownfields is insufficient.**

Firstly, there is no difference under the state aid rules, if the investment is realized on the brownfield or on the greenfield. However, building or developing activities on the greenfield is cheaper from the investor's point of view. **There is no motivation for the investors to realize their investments on the brownfields.** The investment realized on the brownfield is **much more expensive.** Such investment is limited by the construction, technical parameters and

other factors. **Therefore, we would welcome introduction of aid for brownfields within the state aid rules.**

Secondly, **not every project realized on the brownfield is possible to support under the CEEAG.** There are projects, which do not meet the requirements of CEEAG. For example, initial investment is such kind of the investment.

The state aid rules do not give any motivation to the investors to realize their investment on the brownfields. Especially in coal regions, **the brownfields are ecological burden for the landscape.** Example of such brownfield is previous coal mine. **That's the reason, why we would very welcome, if the aid for brownfields would be introduced as a new category of aid in the state aid rules.**

The easiest way, how to support investments on the brownfields is to **grant bonus 35% for projects realized on the brownfields.**

Another option is to support the revitalization of the brownfields, which will be used for economic activities after the revitalization. The aid intensity should be 35%.

In line with Regional Aid Guidelines, which will be in force from the year 2022, **we suggest to increase the aid intensities by 10 percentage points for territories identified for support from the JTF in a territorial just transition plan of a Member State.**

- **Recommendations on the definition of state aid, in light of recent European Court of Justice cases (a chapter on the notion of aid could be included in the CEEAG, e.g. before the second chapter on scope and definition)**

The draft CEEAG does not take into account very recent court cases on the definition and boundaries of state aid, and in particular when it comes to exemptions for energy intensive undertakings. These Guidelines only cover measures which fulfil all criteria provided for in Art. 107 (1) TFEU. Particularly, measures which do not involve State resources shall not constitute aid within the meaning of Art. 107 (1) TFEU and therefore shall not be covered by the State aid regime. This applies, inter alia, when the respective funds are not at the disposal of the state but controlled by private parties. The ECJ recently applied these criteria in a case where funds were generated by surcharges paid by private parties in accordance with national schemes⁴. These funds were exclusively earmarked to finance the respective scheme and the role of the State was limited to the monitoring of the private parties involved. In this case the ECJ explicitly held that these funds were not at the disposal of the state and therefore no State resources were involved. Given the lack of State resources, the exemptions for energy intensive undertakings did also not constitute State aid, given that the system was entirely financed by private players. As a result, such measures do not constitute State aid and do not fall under the scope of these Guidelines. Member States do not face any restrictions under State aid law when setting-up such schemes. The revised CEEAG should take into account these developments and clarify such conditions.

- **Aid in the form of reductions in taxes**

Recommendations on a targeted and distinct approach on harmonised and not-harmonised environmental taxes (section 4.7 Aid in the form of reductions in taxes or parafiscal levies, draft CEEAG)

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 certain category of beneficiaries will not be able to receive state aid related to harmonised environmental taxes - when above the Union minimum tax level set by the relevant applicable Directive - via a simplified approach to assess the necessity and proportionality of the aid. As a consequence, the restrictive criteria to assess the proportionality of aid (paragraphs 269 and 270 of the draft CEEAG) would apply to all beneficiaries and to all type of environmental taxes.

○ **Aid for natural gas (NG)**

We would welcome introduction of a further condition under which the NG would become eligible for aid – processes where it is proven that no other medium available at the place would ensure the manufacturing or production of certain products.

There are NG based processes within industry which cannot be easily replaced. The good example is utilization of NG in the furnaces before steel rolling processes where there is a need to preheat an input material (steel) to very high temperatures to enable start rolling. This heating of big steel blocks cannot be effectively achieved with electricity and hardly to be achieved with combustion of another medium/fuel which is not in place in sufficient amount or is not appropriate to maintain the production and quality of the products.

○ **Aid for coal usage in specific cases**

In some industrial processes, like primary steel making, the coal (coke) as an iron ore reducing agent is still indispensable (so this is not only an energy fuel). There are some new projects in Europe testing other reduction possibilities but no of such technologies is available on the market (and probably will not be in the next years). On the other hand there are still possibilities how to reduce amount of coke used per unit of steel or how to maximize utilization of the waste gases and other by-products (i.e. fulfilling circular economy principles). In such cases the aid should be possible to quickly reduce by available means the environmental impacts until the innovative technologies are available on the market and ready to be used at larger scale.

○ **Paragraph 224**

The COM proposal reads „Aid for the prevention or the reduction of pollution other than from greenhouse gases may be granted for investments enabling undertakings to go beyond Union standards for environmental protection, ...“

This is too stringent condition which can prevent from realization of promising investments. We understand that when talking about the Union standards, then, in terms of pollution, it refers mainly to the IED (BREF) regulation. In principle, the requirement e.g. to fulfill the lower

BAT limits should be required instead of going beyond them, which may not be always possible/feasible.