

Position Paper

Public consultation on the revised Climate, Energy and Environmental Aid Guidelines (CEEAG)

2021-07-30

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1. Introduction

On 7th June 2021, the European Commission (EC) published a communication on the revised Guidelines on State aid for climate, environmental protection and energy 2022 (CEEAG).¹

We understand that the draft CEEAG is set against the background of the 14 July 2021 Fit for 55 package. We recognise the importance of the Green Deal in transforming the European Union into a modern, resource-efficient and competitive economy.

The purpose of the CEEAG is to create a simplified process to assess the compatibility of State aid granted by EU Member States. The CEEAG will create a framework that will be instrumental in giving Member States the necessary tools to develop tailored incentives which will help them to achieve the objectives of the Green Deal in addition to the Fit for 55 package.

The Commission has conducted an evaluation of the current Guidelines as part of the State aid Fitness Check. The evaluation revealed that the EEAG needed to be aligned with the Commission's strategic priorities, in particular those regarding the Green Deal, and with other recent regulatory changes in areas of energy and environmental protection. The CEEAG determines that as from 1 January 2023, all national measures need to be aligned with the updated CEEAG. As mentioned above, the CEEAG needs to provide Member States with the necessary room to manoeuvre to continue a policy where comparable companies can benefit from the same measures.

Bitkom welcomes the new proposal, especially with regard to the twin green and digital transition under the European Green Deal. The Green Deal is an important and necessary step towards achieving the climate targets. In order to achieve the ambitious goals of reducing greenhouse gases, expanding renewable energies and increasing energy efficiency, it is important to facilitate aid regimes in these areas. This is the only way to increase the capacity of companies to invest in projects that contribute to achieve the ambitious goals of the EU.

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¹ https://ec.europa.eu/competition-policy/public-consultations/2021-ceeag_en

There are, however, a number of points at which the proposed draft fails to address the situation of new, non-conventional energy-intensive users such as data centres, which conflicts with the principle of non-discrimination. In addition, more flexibility is needed to enable a greater uptake of renewable Power Purchase Agreements (PPAs).

Also, when revising the CEEAG, the requirements of planning security and reliability as well as the protection of trust must be sufficiently taken into account. The considerable investment requirement for the implementation of measures to avoid greenhouse gas emissions, to secure the energy supply as well as in the area of district heating and district cooling requires stable political and legal framework conditions for plant operators and investors. Especially when projects have already been implemented or are specifically in the planning or implementation phase, the investment decision made must not be negatively influenced subsequently.

The EU's Digital Strategy recognises the central role of data centres in achieving the Green Deal objectives as well as their important role in reaching the EU's digitisation objectives. Data centres play a fundamental role in today's society and digital economy in which data has become an important resource. And the Fit for 55 package recognises the critical role of renewable PPAs in delivering Europe's climate ambition, and the need for Member States to establish frameworks, which may include support schemes, to facilitate their uptake.

The CEEAG must provide Member States with the scope to develop tailored solutions that can allow all sectors, including data centres, to contribute to the Green Deal objectives in the best possible way. This document aims to provide the Commission with suggestions for additional guidance and clarity on how the CEEAG should work in practice, in order to increase legal certainty for new types of industries with high energy consumption (new EIUs). In this respect, we suggest a number of amendments to the CEEAG.

First, we address Section 4.11 (Aid in the form of reductions from electricity levies for energy-intensive users) as the notion of 'energy-intensive users' (EIUs) does not seem to be adjusted to new EIUs. Second, we address Section 4.7 (Aid in the form of reductions in taxes or parafiscal levies) as the description of the rationale for aid and the scope of application may be too narrow and may not provide enough flexibility for Member States to incentivise investment in renewable energy via corporate procurement.

2. Lack of adaptation to new energy-intensive users (EIUs)

The scope of application of Section 4.11 is not adapted to new types of industries with high energy consumption ('new EIUs').

2.1. Introduction

As is recognised in section 4.11 of the draft CEEAG, the transformation of the EU's economy in line with the Green Deal objectives is partially financed through levies on electricity consumption. These levies may create a significant additional burden for certain economic sectors because they rely heavily on electricity for their value creation, referred to as Energy-Intensive Users (EIUs).

Section 4.11 of the CEEAG allows for state aid to be provided in the form of reductions in electricity levies for EIUs to limit their exposure to competitive disadvantages in the case that the EU's environmental ambition is not matched outside of its boundaries.

It is stated that Section 4.11 is limited to sectors that are at significant competitive disadvantage and risk of relocation outside the EU which, according to the CEEAG, depends on two factors: electro-intensity and trade intensity. However, the notion of an 'EIU' in the CEEAG seems to be limited to traditional industries such as manufacturing and mining.

These traditional industries have a particular cost and profit structure, showing a material amount of cost of goods sold and a turnover that covers the cost of goods sold, as well as the costs of manufacturing with a market-based return for the undertaking. This cost structure reflects that in the traditional industries there is a raw material component or acquisition of materials/goods, which are subsequently transformed into a final product. That product is eventually sold to customers both inside and outside of the EU. The value creation is based on elements such as intellectual property, expertise and the know-how of the production process. As electricity prices rise, the price of the goods will increase and if this undertaking has a sufficient level of trade outside of the EU, this will create a competitive disadvantage. However, non-traditional EIUs ('new EIUs' such as data centres) often have a completely different cost and profit structure for rendering their services. A traditional indicator of trade intensity based on e.g. turnover or another component of the profit and loss account, may have undesired outcomes and may lead to significantly different outcomes for traditional versus new EIUs.

A number of new industries are going through a period of significant expansion. The data centre industry is for example going through a period of significant growth. This growth can be realised also outside the EU if competitive factors indicate that an EU investment is less attractive (e.g. because of differences in the operating costs in the EU compared to outside the EU as a result of electricity levies).

Hence, traditional benchmarks or indicators to measure the trade intensity of a business are not suitably defined to encompass new types of industries which are more service-driven, such as data centres. In practice, this implies that only *traditional* EIUs may be eligible to benefit from state aid instruments of Member States allowed under section 4.11 .

Taking into account the objective of the CEEAG, and in particular section 4.11, data centres are however comparable with the traditional industries (we refer to the arguments presented later in this section for more details):

- The objective of the CEEAG, Section 4.11, is to protect the competitive position of certain high energy using sectors. In view of this, traditional industries and data centres are comparable.
- Traditional and new EIUs are equally electro intensive, since a significant part of the operational costs are composed of electricity related costs. An increase of the electricity levies would thus impact both new and traditional EIUs in a similar manner.

- Both traditional EIUs and new EIUs (such as data centres) are exposed to international competition for their activities, meaning that the competitive position of both sets of EIU are significantly impacted (in the event of a significant cost increase) compared to non-EU competitors (resulting in a relocation risk). We refer for more details to section 2.3. in this document.

As we will set out in more detail below, Section 4.11 is, in our opinion, not adapted to new types of industry (what we class as 'new EIUs'). Given the disadvantageous effect this will have to new EIUs in practice, Section 4.11 could be considered in breach of the principle of non-discrimination. Compatibility with the principle of non-discrimination would require that all comparable industries are included in Annex I, or given the opportunity to demonstrate that they are in a comparable position to Annex I industries. We propose amendments to the wording of the CEEAG to remedy this.

2.2. Significance to Green Deal and Digital Strategy

Data centres and other 'new EIUs' are central to the EU's Green Deal and Digital Strategy objectives.

The EU's Digital Strategy recognizes the central role of data centres in realising the EU's digitization objectives as well as their important role in achieving the Green Deal objectives.

The Digital Strategy explicitly sets out an objective for data centres to become 'climate neutral' by 2030. The Communication *Shaping Europe's Digital Future*² states that 'data centres and telecommunications will need to become more energy efficient, reuse waste energy, and use more renewable energy sources. They can and should become climate neutral by 2030.' The European data centre industry is strongly committed to achieving this goal. As an example, a major coalition of European data centre operators and trade associations recently established the *Climate Neutral Data Centre Pact*,³ under which data centre operators have made an unprecedented commitment to transition their industry towards sustainable operations, in line with the Green Deal goals.

The Digital Strategy also identifies the importance of ensuring that data centres and other digital infrastructure is built within the EU. The same Communication also states that 'European technological sovereignty starts from ensuring the integrity and resilience of our data infrastructure, networks and communications. It requires creating the right conditions for Europe to develop and deploy its own key capacities, thereby reducing our dependency on other parts of the globe for the most crucial technologies.' Moreover, the Commission Communication *2030 Digital Compass*⁴ identifies that '*Europe needs to strengthen its own cloud infrastructure and capacities.*'

These examples demonstrate that the EU recognises the importance of data centre infrastructure within the EU. Both the EU and its Member States aim to ensure that data centre infrastructure is located within the EU, and that this infrastructure should contribute to the climate neutrality goals of the Green Deal.

² https://ec.europa.eu/info/sites/default/files/communication-shaping-europes-digital-future-feb2020_en_4.pdf

³ <https://www.climateutraldatacentre.net/>

⁴ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52021DC0118>

2.3. Relocation risks of traditional and new EIUs

Data centres and other new EIUs are exposed to the same relocation risks as traditional EIUs.

The CEEAG propose two criteria to assess the risk for a given sector to relocate outside of the Union due to the higher costs imposed by environmental levies: (1) electro-intensity and (2) trade-intensity.

Data centres are a highly electro-intensive sector, depending heavily on electricity for value creation. The proposed *recast Energy Taxation Directive*⁵ clearly states that 'data centres are energy intensive services' (p.126). Appendix A sets out a series of additional references, which demonstrate how significant electricity spending is as a share of total operating costs for data centres, and therefore how important a factor electricity cost is in decisions on data centre site selection and expansion. Data centres can easily satisfy the proposed threshold for electro-intensity of >10% set out in the draft CEEAG, and have significantly higher electro-intensity than many of the sectors identified in Annex 1. Significant increases in electricity charges can therefore have a major influence on the competitiveness of data centres.

Furthermore, new EIUs, like traditional EIUs, are exposed to international competition. This means that the competitive position of both sets of EIUs are significantly impacted (in the event of a significant cost increase) compared to non-EU competitors (resulting in a relocation risk). Several Member States have determined that data centres are exposed to a high level of international trade and deemed them to be eligible for the same reduced tax rates as other energy-intensive sectors. An inquiry commissioned by the Swedish government, which examined the potential eligibility of data centres, concluded the following:⁶

'The Inquiry has found that certain companies operating in the data centre industry are both electricity-intensive and exposed to international competition. These are two factors that, in the current model, have been deemed to justify a lower tax rate. In view of this, and considering the potential that lies in the development of an industry that has large investment needs and can generate new jobs, the Inquiry considers that there is sufficient reason to propose a lower tax rate for the data centre industry. The Inquiry therefore submits a proposal to this effect, incorporating it in the system that the Inquiry proposes to fulfil the requirements of EU law. Under the proposal, the lower tax rate that currently applies to manufacturing in industrial activities will apply to data centres where a business operator mainly engaged in information services, information processing or rental of server space with associated services carries out such activities' (p.27)

There is therefore a clear case that data centres are both highly electro-intensive *and* exposed to international trade.

Furthermore, whilst the electro-intensity criteria is a suitable criterion for assessing a given industry's exposure to increases in electricity costs, the current indicator for trade-intensity (where trade intensity is measured as the % of

⁵ https://ec.europa.eu/info/sites/default/files/revision_of_the_energy_tax_directive_0.pdf

⁶ <https://www.regeringen.se/contentassets/da34165c8c574078921b4bcb31355ff8/energiskatt-pa-el--en-oversyn-av-det-nuvarande-systemet-sou-201587>

the sales realised outside the EU) is in our opinion not a suitable metric for assessing the risk of relocation for all industries, particularly for new EIUs. The trade-intensity metric is designed for industries producing goods and is based on levels of exports of those goods outside of the Union. It has not been designed for service-oriented EIUs such as data centres, who are exporting services, delivering essential digital services to Member States, and for whom the data required to quantify trade-intensity is not readily available. It is clear that these new EIUs are also at a high risk of relocation given that electricity cost is such a significant factor in investment decisions, and because a major part of the services that data centres deliver can be provided from anywhere in the world. Since data is intangible, data centres do not necessarily have to be located close to customers for a large number of key services.

Although the Support Study on the revision of the EEAG supports the use of the electro-intensity and trade intensity parameters, it provides that the literature focusing on the role of trade intensity for the impact of energy prices on competitiveness and relocation risk is limited. This study provides that there are additional parameters which were suggested in the reviewed literature or raised in the public consultation as relevant to identify sectors at risk of relocation. These parameters could refine or complement the current criteria for eligibility for levy exemptions.

The traditional approach whereby industries are considered at risk of relocation because they have a significant part of sales outside the EU, is therefore not an appropriate indicator for relocation risk in more digitalised service sectors:

- Existing ownership of immovable property is often considered as a factor reducing the relocation risk. In this respect, it is important to note that e.g. the data centre sector is investing and growing significantly and that data centres may be flexible to choose their preferred location for upcoming investments in new immovable property across the world. Furthermore, data centres will seek to invest further in existing sites to expand them as demand for digital services grow - however site expansion decisions are highly dependent on electricity costs. Hence, the existing ownership of immovable property may be an appropriate relocation risk indicator for traditional industries, but it is not an appropriate indicator for data centres.
- Data driven services rendered by an EU data centre can also be rendered by a non-EU data centre. When digital data services rendered from the EU become relatively more expensive (because of significant increase in the cost of electricity), such price increases are unlikely to be transferred to the end user given the fact that there are substitutes available for services rendered by an EU based data centre. In particular, the services can be rendered by a non-EU data centre. This supports that an increase in electricity costs cannot be cross-charged to the end user and directly impacts the cost base of the data centre (and its competitive position).
- The strategic interest of Member States to localise an industry within the EU as a factor to determine the risk of relocation will also be determined differently. Strategic interest, such as keeping control over important data (cf. GDPR), will be determined differently if it regards new types of industries compared to traditional industries. In addition, it should be considered that data centres will be of strategic importance also for other industries that increasingly depend on data and cloud services to innovate and improve performance.

The aforementioned suggests that a number of more qualitative indicators could be explored as alternatives to the trade intensity criterion, including:

- the ability to serve customers in the EU from locations outside the EU,
- the ability to cross charge price increases to the ultimate customer (and the ease of substitution of EU based service providers by non-EU based service providers),
- the expected market growth (which reflects the likelihood of site expansion / investments in new capacity whose site selection will depend on the competitiveness of electricity rates in a given jurisdiction)
- the strategic importance of the processes/industry for the Member State or other industries in the EU.

Given these factors, data centres should be considered to be in a comparable legal and factual situation to other, traditional EIUs, that are faced with a risk of relocation outside EU borders. The traditional measure of trade intensity as an indicator for relocation risk is not suitable for new EIUs which are service-oriented. Therefore, some additional/alternative means of determining risk of relocation is needed and should be included in the CEEAG in order to ensure a non-discriminatory set of rules supporting the Green Deal realisation.

We are furthermore of the opinion that for strategically important sectors for which the cost of energy is a determining element in location of the investment, it is important that the competitiveness of the EU internal market is secured.

2.4. Non-discriminatory application

2.4.1. The Principle of non-discrimination

As a legislative instrument of the EU, the CEEAG must respect the fundamental principles of the EU. These principles are included in the EU treaties and the EU Charter of Fundamental Rights. One of, if not the most important of these principles is the non-discrimination principle. This principle forms the cornerstone of the European Union's single market.

The non-discrimination principle in essence defines that two comparable situations should not be treated differently. The concept of discrimination also includes indirect discrimination which is considered to be an 'effects-based' concept.

Furthermore, the CEEAG provides that a Member State must demonstrate that a decision to provide state aid is made on the basis of objective, non-discriminatory and transparent criteria. Aid must be provided in the same way for all competitors which are in a comparable factual situation. As such it is important that the CEEAG lay down provisions which also take into account the principle of non-discrimination.

In order to assess the comparability (especially under EU State aid rules), first the policy objective of the measure in question should be identified. As a second step, undertakings that are in a comparable legal and factual situation in light of that objective should be identified.

2.4.2. The CEEAG must be applied in a non-discriminatory way

As outlined above, new EIUs such as data centres should be considered to be in a comparable factual situation as traditional EIUs. New EIUs must be given the opportunity to demonstrate that this is the case.

It is stated that sectors meeting the electro- and trade intensity criteria (eligibility criteria) are listed in Annex I, which only includes traditional industries such as manufacturing and mining industries. It is unclear whether or not Annex I is an exhaustive or rather an illustrative list of sectors meeting the eligibility criteria of Section 4.11. We note that the Commission seems to be willing to apply a broader scope of Section 4.11 (and to include new EIUs) (see for example the Support Study for the revision of the EEAG and the Green Deal Communication), yet it is not clear whether new EIUs effectively fall within the scope of application.

In this respect we refer to recital 186 of Section 3.7.2 of the original EEAG, which states that the aid can also apply to undertakings even if they are not listed in Annex 3. We note that the CEEAG does not include this same provision, nor does it include rules or guidelines to calculate electro-intensity and trade intensity. We emphasize the need for clear, transparent and objective calculation methods for determining that a sector satisfies the required thresholds.

Annex I seems to suggest that the trade intensity criterion has been determined on the basis of the traditional formula, being the ratio of the turnover originating from export on the total turnover (or similar). It needs to be recognised that the business model and corresponding profit and loss account of new industries (which are more oriented towards services) is fundamentally different than the traditional industries where goods (reflected as costs of goods sold) are transformed and sold (and where the turnover covers for an important portion the cross charging of costs of goods sold). Other, more qualitative, metrics would be more appropriate to measure the exposure to international competition and risk of relocation.

We emphasize that if new EIUs do not have the opportunity to demonstrate that they are in a comparable position to traditional EIUs, and therefore cannot demonstrate their eligibility for the aid described in Section 4.11, traditional EIUs would be treated more favourably. This, in our opinion, poses a clear breach of the principle of non-discrimination.

The revised rules of the CEEAG aim to enable Member States to fulfil the EU's ambitious environmental objectives of the Green Deal, while keeping possible competition distortions to a minimum. The objective to limit the distortion of the internal market underpins the fact that the aid granted under Section 4.11 should be granted in a non-discriminatory manner. Given the impact of a discriminatory measure on the internal market, it is important to ensure that all provisions within the CEEAG are applied in a non-discriminatory and transparent manner and that

the aid is granted in the same way to all undertakings that are in a comparable factual situation in light of the objectives of the CEEAG.

It is therefore crucial that the scope of Section 4.11 of the CEEAG also covers the new EIUs – which are in a comparable factual and legal situation – in order to be treated in the same manner as traditional industries.

European guidelines cannot have a discriminatory effect. Moreover, they must be non-discriminatory in order to achieve their full effectiveness. Moreover, there is no justification for the difference in treatment, since such justification can only be derived from an objective of common European interest, which this difference in treatment clearly does not serve. On the contrary, this discriminatory effect is clearly contrary to the EU's objectives.

Excluding the new EIUs from the scope of application will not only pose an unjustified infringement of the principle of non-discrimination, it would also expose certain strategically valuable sectors to relocation outside the EU and impact the competitive position of the EU.

The assessment of trade intensity and electro intensity should be performed at the right level.

In addition, we want to stress that the calculation of thresholds should be considered on the appropriate scale/level. Annex 4 of the EEAG apparently determined the calculation method for electro-intensity on the basis of the notion of “undertaking”, as defined in Annex I of the General Block Exemption Regulation (Regulation 651/2014). This implies that account must be taken of associated enterprise (i.e. a calculator at group level). We state however that it is more meaningful and less complex to calculate the eligibility criteria on the basis of the actual economic activity performed (i.e. at entity level):

- This is particularly relevant for new EIUs where e.g. the data centre is only one component in the entire value chain, as compared to more traditional EIUs where the entire value chain is often organised around the activity with high electricity consumption (e.g. manufacturing activities).
- Given the objective of the CEEAG to mitigate significant adverse impacts on the competitive position of the EU for certain activities, it is most precise to test the conditions at the level of the activity, so starting from the legal entity performing the activity, and to extend the scope of the assessment when closely connected activities are performed by different related legal entities, but to not integrate legal entities that perform fundamentally different activities. The State aid rules focus on the impact, and the above approach would be consistent with this principle.
- This concept of segmentation per business activity is a recognised principle in the international tax rules. Reference can be made to the OECD proposal on international tax reform launched in October 2020⁷.

⁷ <https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-one-blueprint-beba0634-en.htm> (see paragraph 442 and following):

‘The primary reason why it may be necessary to compute the Amount A tax base on a segmented basis is because Amount A will apply only to the profits that groups derive from carrying on in-scope activities. For example, the scope requirements for ADS distinguish between standardised cloud computing services, which would be in scope, and bespoke cloud services, which would not. A

- An example can illustrate the need for business line segmentation. A group of related entities perform 2 different business activities, e.g. production of carpets and the rendering of architectural services (design of offices). Both activities are complementary, but to ensure a proper assessment of the trade and electro intensity, a segmentation (split) of the 2 business activities is required. This would furthermore ensure that the effect of the state aid rules is non-discriminatory when e.g. comparing a business activity that is sometimes a standalone activity and sometimes integrated with other complementary, yet different, activities.

2.5. Requested amendments

In summary, data centres are a highly electro-intensive sector, exposed to international competition, and therefore at high risk of relocation outside of the EU where energy charges are high. Therefore, we are of the opinion that new EIUs such as data centres are in a comparable legal and factual situation to other more traditional EIUs. As such, these new EIUs (such as data centres or data analytics companies) should be included in Annex I and the scope of Section 4.11 should be broadened in order to include new EIUs for which the risk of relocation is considered to be as high as for traditional EIUs. For data centres, this implies adding NACE code 63.1.1 to Annex I.

If it is the case that Annex I is indeed exhaustive and the scope of Section 4.11 is to be limited to the sectors listed in Annex I, this Section in our opinion clearly infringes the principle of non-discrimination, which cannot be justified. Not including new EIUs within Annex I and the scope of application would violate the principle that EU legislation cannot have a discriminatory effect. In order to remedy this discriminatory treatment, we recommend that the CEEAG also allow for one or more alternative criteria to measure trade-intensity for determining the eligibility of sectors under section 4.11. The electro-intensity criterion should be retained, but Member States should be permitted to use an alternative indicator to measure trade-intensity which can still differentiate between sectors at risk of relocation, and those that are not. The CEEAG can set the (qualitative) parameters under which Member States can identify suitable criteria. These parameters could include:

- the ability to serve customers in the EU from locations outside the EU,
- the ability to cross charge price increases to the end consumer,
- the expected market growth (which reflects the likelihood of site expansion / investments in new capacity whose site selection will depend on the competitiveness of electricity rates in a given jurisdiction)
- the strategic importance of the processes/industry for the Member State or other industries in the EU.

We would welcome the opportunity to enter into dialogue with the European Commission to identify and refine suitable alternative criteria that recognise the important differences between traditional industries and more service-oriented industries such as new EIUs.

group that provides both types of services therefore needs an approach to segmentation that enables it to apply Amount A only to the profits derived from in-scope activities.'

In addition, to ensure that all sectors are granted the same opportunity to demonstrate compliance, we also propose that the same provision set out in recital 186 of the 2014-2020 EEAG is included in the CEEAG. The following text should be added under section 4.11.3.1:

In addition, to account for the fact that certain sectors are at significant competitive disadvantage and risk of relocation outside the Union, a Member State can include an undertaking in its national scheme granting reductions from levies on electricity consumption if the undertaking has an electro-intensity of at least 10 % and belongs to a sector with a trade intensity of at least 20 % at Union level (or as an alternative to trade intensity, fulfils alternative (qualitative) parameters⁸ identified by the Member State), even if it does not belong to a sector listed in Annex 1.

We also request that clear, transparent and objective assessment methods are included in the CEEAG for calculating the levels of electro- and trade intensity. This can be achieved by including specific definitions to be appended to the CEEAG.

With respect to the calculation method, we propose to calculate the electro- and trade intensity not at undertaking level (i.e. group level) but instead on the basis of the actual economic activity performed (i.e. by applying business segmentation where relevant). To this extent, the draft could provide that calculations can be made at the level of the undertaking where relevant to ensure the rules are properly applied, and that a business unit segmentation can be implemented.

3. Renewable PPAs

More flexibility is needed in the CEEAG with respect to environmental taxes and parafiscal levies to enable greater uptake of renewable Power Purchase Agreements (PPAs).

3.1. Renewable PPAs central to Green Deal

Renewable Power Purchase Agreements are central to achieving European Green Deal objectives, and Member States want to remove barriers to their uptake

The European Commission has clearly identified a central role for renewable PPAs in achieving the Green Deal objectives. This also follows from the proposed amended Renewable Energy Directive (RED) of July 14, 2021,⁹ which clearly identifies the promotion of PPAs as one of the primary measures for achieving the EU's renewable targets (as identified in Section A of the Executive Summary¹⁰).

⁸ Such as the ability to serve customers in the EU from non-EU locations or the strategic importance of the processes / industry for the Member State

⁹ https://ec.europa.eu/info/sites/default/files/european-green-deal-communication_en.pdf

¹⁰ https://ec.europa.eu/info/sites/default/files/amendment-renewable-energy-directive-2030-climate-target-with-annexes_en.pdf#page=75

One of the greatest pools of untapped potential for PPA uptake in Europe is corporate renewable energy buyers. Corporate buying has grown significantly in Europe with over 8 GW of renewable projects now under contract.¹¹ There is enormous potential to expand corporate renewable energy buying to unlock new sources of revenue stabilisation for renewable projects and contribute significantly to achieving the bloc's renewable energy targets.

The data centre industry is one of, if not the most significant customer-side buyer of renewable energy worldwide.¹² In Europe, the ICT sector is the single largest buyer of renewable energy¹³ with over 4 GW of renewable energy projects contracted under PPAs. As noted, the Climate Neutral Data Centre Pact (a large coalition of data centre operators and data centre trade associations in Europe) have made an unprecedented commitment to transitioning their industry towards climate neutrality, in line with the Green Deal goals. In particular, signatories of the Pact have committed to matching 100% of their electricity demand with renewable energy by 2030. There is therefore enormous potential to leverage the renewable energy procurement ambitions of the data centre industry in particular, as well as many other sectors with similar aspirations.

The proposed amended RED also highlights the significant barriers to uptake of renewable PPAs, and identifies the need for Member States to *'establish a framework, which may include support schemes and facilitating the uptake of renewable power purchase agreements, enabling the deployment of renewable electricity to a level that is consistent with the Member State's national contribution.'* There are still significant barriers to the uptake of renewable PPAs across many Member States in Europe which must be addressed. Therefore, removing barriers facing corporate PPAs and enabling their uptake is a goal that is fully aligned with Green Deal objectives.

Member States wish to introduce policies and measures to address barriers and market failures, enable a thriving renewable corporate PPA (CPPA) market, and diversify the sources of financing for renewable energy projects to help achieve their 2030 renewable energy targets.

Several Member States have proposed or introduced measures to support the growth of renewable CPPAs, including Spain, Ireland and Italy. One innovative example that is currently under consideration in Ireland to address the current barriers to CPPA uptake, is using the renewable energy surcharge paid by electricity consumers as a mechanism to incentivize renewable corporate PPAs. This can be achieved by offering relief on such surcharges conditional on businesses bringing about new renewable capacity additions through entering into renewable CPPAs or investing directly in new renewable energy capacity.

Such a policy instrument could, if well-designed, encourage accelerated deployment of renewable energy capacity outside of public support schemes, whilst simultaneously reducing costs for all electricity consumers. They would also allow Member States to ensure that electricity consumers contribute fairly to the financing of renewable energy, and ensure that they do not pay twice (i.e. paying directly for green energy, e.g. via a PPA, and in addition, paying the full amount of renewable surcharges).

¹¹ <https://resource-platform.eu/wp-content/uploads/Joint-Letter-to-EU-Parliament-on-TEN-E-Regulation.pdf>

¹² <https://www.iea.org/reports/data-centres-and-data-transmission-networks>

¹³ <https://resource-platform.eu/buyers-toolkit/>

3.2. Proposed version of CEEAG lacks flexibility to boost PPAs

Section 4.7 of the CEEAG is fundamental to achieving Green Deal Objectives. However, the current version of the proposed new guidelines does not provide enough flexibility for Member States to use their renewable surcharges as a means of enabling greater uptake of renewable PPAs.

The combination of the description of the *rationale* of the aid categories included in Section 4.7 as well as the description of the scope of application thereof limits the flexibility for Member States to incentivise investments in renewable energy via renewable energy surcharges in this way. As a result, certain measures for enabling renewable energy investments (e.g. utilising renewable energy surcharges to encourage uptake of corporate renewable energy procurement) risk falling outside of the scope of the categories of aid included in Section 4.7.

Section 4.7.1 is based on the polluter pays principle (PPP). However, most regimes for renewable surcharges are not currently designed on the basis of the PPP because they mostly apply to all electricity customers on the basis of kWh usage, and thus not only to users of non-green sourced electricity. The idea of PPP is to *discourage* certain environmentally harmful behaviours. However, there is a major opportunity to expand the scope of section 4.7.1 to enable the use of taxes and levies to *encourage* environmentally positive behaviours, such as enabling investments in renewable energy.

Section 4.7.2 provides for the reductions in taxes and parafiscal levies in order to incentivise beneficiaries to undertake projects and activities resulting in less pollution or consumption of resources. On first sight, this Section seems to be suitable to cover corporate initiatives such as PPAs or other similar forms of mechanisms enabling renewable energy investment. However, Section 4.7.2 is explicitly limited to projects and activities that fall within the scope of Sections 4.2 to 4.6 (such as aid regarding environmental performance of buildings, clean mobility, transition towards a circular economy). Consequently, on the basis of the wording of Section 4.7.2, aid to support uptake of renewables via PPAs would not be covered by this category of aid because it is not covered by Sections 4.2 to 4.6. In addition, it should be noted that PPAs would also not be covered by section 4.1 (*Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy*) because they do not concern a *direct* investment in a project to produce renewable energy. Indeed, Section 4.1 suggests to only apply for undertakings making an investment to reduce carbon emission themselves, and seemingly does not apply to undertakings entering into a contract to reduce carbon emissions through a third party. Hence, the risk exists that the CEEAG does not provide enough flexibility to incentivise concluding PPAs.

In summary, there is a risk that an important part of the tools to realise the Green Deal would risk falling between the cracks.

3.3. Requested amendments

Amending the draft CEEAG will help to ensure that Member States can incentivize the uptake of corporate renewable energy procurement by providing reductions in or exemptions from their renewable surcharges. We propose to provide Member States with this flexibility by broadening the rationale for aid and the scope of

application of Section 4.7 of the CEEAG. This can be achieved by making one of the following alternative amendments:

- (1) The description of the *rationale* for aid as described in Section 4.7.1 of the CEEAG should not impede the application thereof to renewable energy charges. Paragraph 259 can therefore be amended as follows:
 - i. “Some environmental taxes or parafiscal levies (such as carbon taxes) are imposed in order to increase the costs of environmentally harmful behaviour, thereby discouraging such behaviour and increasing the level of environmental protection; other types of environmental taxes or parafiscal levies (such as renewable surcharges) are imposed to increase investments in the realisation of Green Deal objectives (such as the promotion of renewable energy), thereby encouraging such behaviour and increasing the level of environmental protection.”
 - ii. However, to the extent that the European Commission would find that the amendment above is not sufficient because the scope of application of Section 4.7.1 (see paragraphs 261 and 264) still impedes the application thereof to renewable surcharges, we propose to explicitly mention renewable surcharges in Section 4.7.1.2. By updating paragraph 261, (a) as follows: “the reductions are well targeted at those undertakings most affected by a higher tax or contributing to the objective of environmental protection”
- (2) Alternatively, the scope of application of aid as described in Section 4.7.2 of the CEEAG should not impede the application thereof to renewable energy charges in the case of renewable PPAs. In this respect, we propose the following alternative amendments:
 - i. Paragraph 273 of Section 4.7.2 should be amended as follows: *“Where the tax or levy reduction primarily pursues a decarbonisation objective in the form of a direct investment in a project with such objective, Section 4.1 applies and not Section 4.7.2. Where the tax or levy reduction primarily pursues a decarbonisation objective in the form of a partnership with a third party who is investing in a project with such an objective (i.e. an indirect investment), Section 4.7.2 is applicable for the parties indirectly contributing to environmental protection, irrespective of the limitation of the scope to Sections 4.2 to 4.6”*; or
 - ii. the scope of Section 4.1 should be broadened to include both direct and indirect investment in renewable energy projects. Consequently, aid in the form of reductions in taxes or parafiscal levies (see para. 95) could be provided to investors buying renewable energy from renewable energy producers. In this respect, paragraph 74 should be amended as follows: *“This section lays down the compatibility rules for aid measures primarily aimed at reducing greenhouse gas emissions, including aid for the production of renewable and low carbon energy or aid in the form of an incentive to contribute indirectly to the production of renewable and low carbon energy, aid for efficiency [...]”*.

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