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IFIEC response to Public Consultation on CEEAG

IFIEC welcomes the draft CEEAG and the effort to align the state aid framework with the Green Deal objectives. As response to the Public Consultation, we comment upon 1) General principles which should guide the legislator in updating the state aid framework; 2) Specific concerns related to Section 4.11 on reductions for energy intensive users; 3) Other relevant elements.

1. General principles

- **European Energy Intensive Industries (EII) are enablers of the green and digital transition** envisioned by the EU Green Deal¹. No transition will be achieved without a strong industrial base in Europe. EIIs are solutions providers, being near the base of long value chains that provide products, materials and technologies which enable emissions reductions in other sectors of the economy. Further, EIIs have already widely contributed to decreasing GHG emissions in the EU in the past few decades. Between 1990 and 2015, they have reduced their GHG emissions by 36% and accounted for 28% of the total EU-wide economy emissions reductions².
- The CEEAG will be a **key enabler of the industrial transformation towards a climate neutral economy**. The new framework must therefore provide regulatory certainty to European Energy Intensive Industries (EIIs) and their supply chain to facilitate a just transition, while ensuring industries remain competitive globally.
- **Long term and legal certainty**. The framework should provide long-term certainty on support for both investment and operating costs, and on regulatory costs to enhance companies' competitiveness and willingness to initiate sustainable projects. This is important to de-risk investments and make low-carbon solutions competitive with carbon intensive ones. In the same sense, companies need a long-term perspective on European rules related to exemptions schemes. While the current EEAG provisions run until 31/12/2021, the draft CEEAG, paragraph 414 sets that 31/12/2023 is the deadline to eventually adjust ongoing provisions.
 - o This deadline is too short and does not lead to investment security. IFIEC believes that more time should be given to allow existing schemes to operate for their entire duration.
- **Wider scope should not translate into higher costs**. The Commission has expanded the CEEAG to aid to most decarbonization technologies, as well as new areas such as aid to clean mobility, buildings, recycling and resource efficiency. IFIEC welcomes the broader scope, as these new areas represent additional opportunities for industrial decarbonization. However, it is important that support to new areas should not be passed on into additional charges to industrial energy-intensive consumers, who face international competition and carbon and investment leakage. Industry should be protected not only from extra costs stemming from renewable financing, but from all new decarbonization charges linked to the transition like e.g. mandatory quota for hydrogen. Moreover, as long as State Aid is no obligation, it can in no means be regarded as EU wide carbon leakage protection.

Against this backdrop, IFIEC would like to make the following specific recommendations:

¹ COM(2020)/102 Final A New Industrial Strategy for Europe (see point 2.2)

² Masterplan for a Competitive Transformation of EU Energy-intensive Industries Enabling a Climate-neutral, Circular Economy by 2050.

2. Section 4.11 - Reductions for electricity levies for Energy Intensive Users

- IFIEC welcomes that the new Guidelines will continue to allow for levies reductions for energy-intensive users. This is extremely important considering that the financial burden for these levies will most likely increase in the coming years due to higher renewable support. It is also welcome that reductions have been extended to new areas, namely support for high efficiency Combined Heat and Power (CHP) and funding for Public Service Obligation (PSOs).
 - o IFIEC calls for the scope to be further extended to include the possibility to exempt Energy Intensive Users from surcharges due to Capacity Mechanisms funding.
- **Aid intensity and GVA limitation**
 - o According to par. 359 of the draft text, levies reduction will be considered proportionate if undertakings pay at least 25% of the levies concerned. This minimum level of contribution at sector level is higher compared to what companies are exposed to in current guidelines. Therefore, we call on the Commission to set the minimum back to 15 %.
 - o Furthermore, there is also a possibility to cap undertakings' own contribution to 1.5% of their GVA (par. 360). This is also an increase compared to current guidelines, where there is a double cap of 0,5 % and 4 % GVA.
 - IFIEC welcome the fact that the additional GVA limitation is open to all eligible undertakings in a given sector.
 - However, we are concerned that the value of 1.5.% may be too high for some sectors, compared to what undertakings are exposed to no, therefore the cap of 0,5 % must be kept.

Rationale: Any reduction in Aid intensity compared to the current system will impact on the EII competitiveness considering the huge increase in RES generation envisioned by the EU Green Deal and the Fit for 55 Package from now until 2030. Lower aid intensity could be counterproductive with respect to the objectives of the green and digital transitions for industry³, where the electrification of industrial production processes represents one of the main levers. Therefore, criteria should to a maximum be designed to shield all eligible companies exposed to carbon leakage.

- **Cumulative effect of eligible levies (par. 355-356)**
 - o The draft guidelines introduce a new provision asking Member States to inform about the cumulative effects of all eligible levies.
 - o In the Consultation, the Commission asks stakeholders what should be the minimum cumulative level per MWh that is a necessary threshold to allow the reductions.
 - IFIEC believes that to prevent distortion and avoid the risk of carbon leakage, this level should be eliminated or at least set at the lowest possible level.
 - Identifying such minimum level across Europe would be a challenge as there is no single cost across the EU. Any chosen minimum would be arbitrary and not reflective of the realities.
 - Furthermore, compensation should not be made conditional to a minimum level of the levies. Due to the very large energy consumption and the partial nature of exemptions, energy intensive industries would have major competitive disadvantage compared to producers based in third countries that do not have comparable climate legislation and related regulatory costs.

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³ See "EU New Industrial Strategy" COM(2021) 350 Final Chapter 5 "Supporting the business case for the green and digital transition"

- **Conditionality (par. 364-365):**

- Firstly, it is important to mention that due to their high energy intensive nature and exposure to global competition, EILs have the strongest incentive to be as energy efficient as possible to reduce the costs. Should some form of conditionality be introduced in the new framework, it should be well designed, proportionate and should have an incentive effect without penalizing the companies that have already invested in these measures.
- The draft introduces some precise clauses for beneficiaries to comply with (par. 364-365).
 - First, IFIEC is sceptical towards introducing some environmental conditionality and in particular towards the value of linking the aid to energy audit obligation foreseen under Article 8 of the EED.
 - Furthermore, the draft asks beneficiaries to go beyond what is foreseen under Article 8(4) of the EED, introducing some ambitious requirements. We are particularly concerned about the concrete feasibility and implications for our sectors.
 - We also notice some inconsistencies between the efficiency requirements, which are at industrial site level, while the aid granted by EEAG is at undertaking level.
 - Finally, IFIEC strongly calls for ensuring consistency between the different policies. Any overlap between different policies and directives risks reducing legal certainty and the visibility and predictability of strategies over the long term. EILs need a stable and unambiguous regulatory framework.
 - To this purpose, we propose that current conditionality is limited to the first requirement listed in par. 365, i.e. the requirement for the beneficiary to conduct an energy audit and bring the payback time on 3 years in line with the indirect cost compensation. This would align the draft EEAG with the conditionality proposed in the EU ETS proposal adopted with the Fit for 55 Package on July 14.

- **Eligibility**

- The Commission has reduced the number of sectors eligible for aid under section 4.11 (List in Annex I) from 233 of the current Guidelines to 51 sectors.
- IFIEC is very concerned that an even more restricted approach will undermine sectors' ability to transform and decarbonize. Continuing and extending the reduction from electricity surcharges is fundamental to drive the electrification pathway that many sectors have already undertaken.
- We believe that a wider approach should be considered. In fact, carbon leakage risk needs to be measured more broadly:
 - Taking into account the value chain indirect effects - reductions should be possible for companies which are burdened through a high energy intensity as these sectors bear a similar risk if not considered eligible to cost compensation. Not being eligible causes distortions in competition with competitors which do not face an equivalent burden. In particular, this applies to sectors active in intermediate elements of the manufacturing value chains (e.g. pressurised air, industrial gases, recycling materials) which - even though only indirectly exposed to international trade and competition – represent a relevant cost factor for sectors already identified in the present draft. In cases where market distortions occur, such sectors could be allowed to use the trade intensity of their customers.

The concept of trade intensity, calculated from statistical data, should be expanded beyond the proposed thresholds, looking at future risk of competition. I.e. the fact that there might be no cross-border trade for a certain product yet, but such international trade may be triggered immediately by the introduction of energy cost-increase on one side of the border. The criteria should to a maximum reflect the exposure to carbon leakage.

Other aspects

- **Section 4.1.**

- Section 4.1 - regulating aid for the reduction and removal of GHG emissions, including RES support, is a positive development, in particular the support to *most* types of decarbonization technologies.
- Par. 100 of the draft CEEAG notes that aid for the decarbonization of industrial activities must reduce the emissions *directly* resulting from that industrial activity.
 - We believe such provision should clearly state that aid for industrial decarbonization does refer also to reduction of *indirect* emissions. For the most electro-intensive sectors, these emissions represent the bulk of their footprint (hence where the highest mitigation effort is needed).
- New aid instruments, such as **Carbon Contracts for Difference**, are welcome, but clarifications are needed with regards to how this instrument will be designed and financed without burdening energy intensive industries.
- As part of the extra cost resulting from the decarbonization, aid should be allowed to reduce the shaping costs for industrial energy-intensive consumers, meaning the costs incurred when re-shaping variable renewable production so as to match the consumption profile of industrial consumer. These costs should be fully compensated being directly related to RES development.

- **Taxonomy**

- IFIEC strongly disagrees that access to any support scheme shall be subject to the compliance with EU taxonomy criteria.
- Paragraph 69 in the draft CEEAG refers to the use of the EU Taxonomy Regulation 2020/852 article 3 and 'Do No Significant Harm' (DNSH) criteria for balancing the weighing effects on trade and competition.
- Firstly, we raise concern about the reference to the EU Taxonomy due to fact that the Taxonomy is a legislative framework largely under development. Although the Regulation has been adopted since June 2020, there are several Delegated Acts still under development. The consequence can be regulatory uncertainty for projects that might be subject to state aid under the implementation of the CEEAG.
- Second, the Taxonomy Regulation is a voluntary classification system establishing which activities are defined as environmentally sustainable economic activities. The intention is to create greater transparency for investors. If the taxonomy criteria will be used as a condition for State Aid, it would expand the application of this instrument beyond its original intention, without achieving any additional benefits. Nor would it help industrial decarbonization.
- Finally, there is no link or consistency between activities included in the EU Taxonomy and sectors/activities subject to carbon leakage risks.

- **Section 4.8.**

- Point 324 of the CEEAG stipulates the following: “[...] *the costs of a security of supply measure should be borne by the market participant who contribute to the need for the measure. [...]*”. This sentence shows that EC aims to specify how the aid must be financed and thus limits the freedom of choice of the Member State as regards the cost pass through of such measure, surpassing the subsidiarity principle anchored in EU law.
- We suggest to amend this sentence as follows: “[...] *the costs of a security of supply measure should **in principle and to the extent that the costs of financing security of supply measures are recovered from market participants** be borne by the market participant who contribute to the need for the measure. This may be achieved by allocating the costs of a security of supply measure **to market participants who have contributed to the occurrence of market failures, e.g. electricity generators in periods of insufficient electricity production**”.*

- **Definitions**

- IFIEC has concerns with the definition of 'demonstration project' (i.e. *a project demonstrating a technology as a first of its kind in the Union and representing a significant innovation that goes well beyond the commercial state of the art*).
 - A strict interpretation of the term "first of its kind" would mean that only one project per technology to be scaled up could be recognised as a demonstration project.

- Secondly, IFIEC sees some risks with regards to the definition of "eco-innovation", i.e. *all forms of innovative activities, including new production processes, new products or services, and new management and business methods, resulting in or aimed at significantly improving environmental protection and significantly reducing the environmental impacts of pollution. For the purposes of this definition, the following are not considered innovations: [...]*. The cumulative condition of (i) improvement of environmental protection and (ii) impact on pollution leads to a very narrow definition. As a result, much of what is currently considered as "eco-innovation" would no longer qualify. Reducing the environmental impact as such should be sufficient. Moreover, environmental impact should be interpreted sufficiently broad (e.g. CO₂ emissions reduction and avoidance, resource efficiency, sustainable products with reduced impact on people and environment, etc.)