

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

1. About CISPE

Cloud Infrastructure Services Providers in Europe (CISPE) is a non-profit association that focuses on developing a greater understanding and promoting cloud infrastructure services in Europe. Members based in 14 EU Member States range from SMEs to large multinationals. CISPE members have invested billions of euros in Europe's digital infrastructure and currently provide services to millions of customers, including organisations in multiple countries and locations outside the EU.

Security and data protection are cornerstones of the CISPE constitution. CISPE was the first association in Europe to develop a dedicated GDPR-compliant Code of Conduct for Data Protection for cloud infrastructure services to help providers comply and enable customers to select providers and build trust in their services. CISPE also co-chaired the cloud industry working group (European Commission) to develop codes of conduct for reversibility and data portability under the Regulation on the free flow of non-personal data.

CISPE is committed to sustainability and addressing the threat of climate change. CISPE members focus on energy efficiency as the first fuel. Cloud infrastructure is energy intensive and reducing consumption through efficient cooling, innovative designs and new technologies is a top priority. The efficient data centres that host the public cloud are also improving the energy efficiency of the ICT sector. Large scale data centres are almost always inherently more efficient than on-premises or enterprise-owned servers or data centres. Public cloud provides computing power on demand so that businesses, public agencies, and individuals may scale their use up and down instead of having to provision and power enough privately-owned servers for their peak demand. In the same way that public transportation moves people more efficiently than individually owned cars, the public cloud enables efficient compute, storage, data management and countless other ICT services.

Beyond efficiency, CISPE is committed to clean energy. CISPE members purchase renewable energy to power the digital climate-neutral future and deliver low-carbon services to customers across Europe. In concert with the European Commission, CISPE co-founded the Climate Neutral Data Centre Pact and has committed to the Climate Neutral Data Centre Self-Regulatory Initiative, which is focused on meeting ambitious energy efficiency and renewable energy targets to serve the European Green Deal.

CISPE offers the following feedback in response to the draft of the Guidelines on State aid for climate, environmental protection and energy 2022 (CEEAG).

2. Outline of CISPE Feedback

CISPE's submission is organized into specific sections that follow this outline:

- A recognition for renewable energy purchasing in the CEEAG
- Recommended amendments to encourage renewable energy purchasing
- Inclusion of data centres at energy-intensive users
- Recommended amendment to include data centres as EIUs

3. Recognizing Renewable Energy Purchasing in the CEEAG

CISPE applauds the ambition of the European Green Deal and the efforts underway to make Europe climate neutral by 2050. Achieving the goals of reducing greenhouse gas emissions 55% by 2030 will require new and creative policy solutions and CISPE members are prepared to act. CISPE members operate data centres across Europe.

CISPE members and other corporates can play a role in helping to finance the deployment of new renewable energy to meet the ambitious goals of the European Green Deal. Voluntary corporate renewable energy procurement creates an opportunity to add new renewable capacity to the European electric grid and help Member States achieve their renewable energy goals. By leveraging corporate investments in renewable energy, Member States can also offset some of the costs for renewable energy traditionally borne by consumers.

Power purchase agreements (PPAs) are a mechanism by which businesses enable renewable energy assets to be developed on electricity grids through private-sector investment. PPAs allow for Member States to diversify the financing mechanisms relied upon to meet renewable energy targets. PPAs are growing globally, with the ICT sector leading the way. In 2020, global renewable energy purchasing through power purchase agreements reached record levels with 23.7GW of clean energy announced¹.

The European Commission has recognized the value of PPAs for advancing renewable energy procurement. The recent draft update to the Renewable Energy Directive (released on 14 July 2021) identifies the promotion of PPAs as a mechanism for meeting renewable energy targets.² PPAs are essential in enabling the EU to achieve the proposed new 40% RE target. They provide a significant opportunity to leverage private capital to accelerate the expansion of renewable energy in Europe. Many of CISPE's members are signatories of the Climate Neutral Data Centre Pact. As part of the Pact, these data centre operators have committed to match 100% of their electricity demand with renewable energy by 2030.

However, administrative and regulatory barriers to PPAs continue to limit pathways to renewable energy purchasing in Europe. The recent draft update to the Renewable Energy Directive II recognizes these issues and calls 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."* Several Member States have introduced or are considering measures to encourage PPAs. One innovative example is currently under consideration in Ireland, where amending the existing renewable energy levy could be a mechanism to promote more PPAs. This incentive would occur by offering relief from electricity surcharges for companies entering new renewable energy PPAs in the Member State. This policy change could drive more private investment into renewables in Ireland. Because such PPAs reduce the need for public subsidies, it has the follow-on effect of reducing costs for all electricity customers that would otherwise cover such costs.

This example under development in Ireland could be replicated in other Member States, however, the current draft of the CEEAG does not provide the flexibility to Member States to enact such policies. Under Section 4.7 and description of the scope of applications, the aid categories places restrictions on Member States that seek to amend renewable energy surcharges to encourage PPAs.

3.1 Suggested amendments

The description of the *rationale* for the aid of Section 4.7.1.1. of the CEEAG should allow for amendments to renewable energy surcharges. Paragraph 259 - *"Some environmental taxes or para-fiscal levies (such as carbon taxes) are imposed to increase the costs of environmentally harmful behavior, thereby discouraging such behavior and increasing the level of environmental protection; other types of environmental taxes or para-fiscal levies (such as renewable energy surcharges) are imposed to support increased investments in the realisation of Green Deal objectives (such as the promotion of renewable energy), thereby encouraging such behavior and increasing the level of environmental protection."*

¹ <https://about.bnef.com/blog/corporate-clean-energy-buying-grew-18-in-2020-despite-mountain-of-adversity/>

² https://ec.europa.eu/info/sites/default/files/amendment-renewable-energy-directive-2030-climate-target-with-annexes_en.pdf#page=75

This approach would also require consequential amendments to Section 4.7.1.2 as set out below:

Paragraph 260 – *"Granting a more favourable treatment to some undertakings may facilitate a higher general level of environmental taxes or parafiscal levies. Accordingly, reductions in environmental taxes or levies can at least indirectly contribute to a higher level of environmental protection. However, the overall objective of the environmental tax or parafiscal levy to discourage environmentally harmful behaviour or to support investments which increase the level of environmental protection should not be undermined".*

Paragraph 261(a) - If the amendments above are not sufficient because the scope of application of Section 4.7.1.1. could still hinder impedes amendments to renewable surcharges, we propose to explicitly mention renewable surcharges in Section 4.7.1.2., paragraph 261 (a) -*"the reductions are well targeted at those undertakings most affected by a higher tax or contributing to the objective of environmental protection"*

As an alternate approach, the application of the aid within Section 4.7.2 of the CEEAG should not hinder investments in PPAs. To achieve this outcome, amend Paragraph 273 of Section 4.7.2 - *"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 cooperation through a third party investing in a project with such objective (i.e. an indirect investment), Section 4.7.2 is applicable for the parties indirectly contributing to the environmental protection, irrespective of the limitation of the scope to Sections 4.2 to 4.6";* or

We also recommend that Section 4.1 is broadened to include both direct and indirect investment in renewable energy projects. Paragraph 74 - *"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 in the production of renewable and low carbon energy, aid for efficiency [...]."*

4. Data Centres as Energy Intensive Industries

The CEEAG has recognised that Energy-Intensive Users (EIUs) may face significant burdens because of their heavy reliance on electricity. This recognition is particularly important because of the role that EIUs will play to transform Europe's economy to achieve the goals of the European Green Deal. Data centres are a critical part of this transformation and a key part of the twin transition towards a climate neutral and digital future. The EU's Digital Strategy recognizes the role of data centres in achieving the EU's digitization objectives and in making Europe the first climate neutral continent by 2050.

Under the CEEAG, EIUs need to meet two tests to qualify for consideration as an EIU; they must be electro-intensive and trade intensive. However, the interpretation of trade intensive under the CEEAG has only been applied to traditional sectors, such as mining or manufacturing. This approach has limited the application of EIUs to emerging electro-intensive sectors, which are more service-focused such as data centres. This limited approach to measure trade intensity has not considered that data centres are also exposed to international competition and face cost pressures due to the increasing price of electricity in Europe. Some additional elements of determining the risk of relocation should be included.

Several Member States have already determined that data centres are exposed to international trade and developed tax rates aligned with other energy intensive sectors.

An inquiry commissioned by the Swedish government³ which examined the potential eligibility of data centres concluded the following:

'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. Considering the potential that lies in the development of an industry with 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.'

Further, the European Commission has already recognized that data centres are electro-intensive. The recent update to the Energy Taxation Directive states that "data centres are energy intensive services." 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.

4.1. Suggested Amendments⁴

Annex I and the scope of Section 4.11 should be broadened to include new EIUs for which the risk of relocation is considered high as for traditional EIUs. For data centres, this implies adding NACE code 63.1.1 to Annex I.

5. Conclusion

CISPE appreciates consideration of our feedback on the CEEAG. We understand the effort underway by the European Commission to update the CEEAG to meet the needs of the twin transition of digitalisation and climate neutrality. Data centres have a critical role to play in the European Green Deal as both an intensive electric industry and renewable energy buyer. We are pleased to be helping to lead the way with the formation of the Climate Neutral Data Centre Pact and our commitment to being climate neutral by 2030. We encourage the European Commission to consider these amendments as essential policy changes that can accelerate the pathway towards our shared goals.

³ <https://www.regeringen.se/contentassets/da34165c8c574078921b4bcb31355ff8/energiskatt-pa-el--en-oversyn-av-det-nuvarande-systemet-sou-201587>

⁴ The proposed approach and suggested amendments do not represent the unanimous view of all CISPE member companies.