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Ref.: HT.5371

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Ihr Zeichen, Ihre Nachricht vom	Unser Zeichen, Sachbearbeiter	Durchwahl	Datum
HT.5371	Rp 1324/21/TT/CG Dr. Theodor Taurer	4418	22.07.2021

Öffentliche Konsultation der Europäischen Kommission für neue Leitlinien für Klima-, Umweltschutz- und Energiebeihilfen (CEEAG) Stellungnahme

Sehr geehrte Damen und Herren,

zum im Betreff genannten Entwurf der Europäischen Kommission (EK) für eine Neufassung
beihilfenrechtlicher Leitlinien (LL) nimmt die Wirtschaftskammer Österreich wie folgt Stellung:

I. Allgemeines

Beihilfeleitlinien sind ein notwendiges Instrument in Richtung Harmonisierung und Modernisierung der Förderregime, mit dem Ziel eines EU Level-Playing-Field und der Vermeidung von Wettbewerbsverzerrungen. Gut konzipierte staatliche Fördermaßnahmen können maßgeblich zum Erreichen der Energie- und Klimaschutzziele der EU für 2030 bzw. 2050 beitragen.

Am Weg in Richtung Klimaneutralität braucht es enorme Investitionen in zukunftsfähige, klimafreundliche Technologien. Förderungen bzw. Beihilfen sind notwendig, um Innovationen marktfähig zu machen und sie in den nächsten Jahren umfassend einsetzen zu können. So wurden zB im Bereich der Photovoltaik wichtige Verbesserungen in den letzten Jahren erzielt.

Der Anwendungsbereich muss in den nächsten Jahren aber viel breiter gesehen werden und wir begrüßen, dass die EK dies in der Überarbeitung der LL berücksichtigt hat. Positiv sehen wir generell die Aufnahme der Bereiche saubere Mobilität, Kreislaufwirtschaft, Energieeffizienz und Biodiversität, auch wenn in den einzelnen Bereichen noch Verbesserungsbedarf besteht (siehe unten).

Wir unterstützen die grundsätzliche Ausrichtung der EK, dass Beihilfen über Ausschreibungen vergeben werden sollen. Für kleine Projekte (zB im Stromsektor) braucht es Ausnahmeregelungen, diese sollten, wie in den aktuell geltenden LL, beibehalten bleiben.

Zu berücksichtigen ist auch, dass energieintensive Betriebe im internationalen Wettbewerb stehen und Planungssicherheit brauchen. Sie benötigen insbesondere bei den sehr hohen Strompreisen eine einheitliche, europäische Entlastung bei den Umlagen auf Strom, um Carbon Leakage zu vermeiden und Wettbewerbssicherheit zu gewährleisten. Daher ist es notwendig, die Sektorenliste der bisher geltenden LL weiter aufrechtzuhalten und wichtige Sektoren (zB 2332 Herstellung von Ziegeln und sonstiger Baukeramik, 2351 Herstellung von Zement, 2352 Herstellung von Kalk und gebranntem Gips) nicht zu streichen.

Wir weisen auch darauf hin, dass Wechselwirkungen mit bestehenden Politikinstrumenten (zB dem Europäischen Emissionshandel/EU ETS) berücksichtigt werden müssen. So hat der steigende CO₂-Preis zB bereits jetzt positive Auswirkungen auf die Wirtschaftlichkeit von erneuerbaren Anlagen (zB Windkraft- und Solaranlagen). Andererseits wirkt sich diese steigende Preistendenz auf die Wettbewerbsfähigkeit der CO₂-intensiven Industriezweige aus.

II. Im Detail

Zu 4.1 Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy

Beihilfen haben naturgemäß Auswirkungen auf die Wettbewerbssituation des Wirtschaftsstandorts und der Unternehmen zueinander. Die WKÖ unterstützt daher die regelmäßige Überprüfung der Beihilfen samt zugehörigem Regelwerk.

Es ist grundsätzlich positiv zu bewerten, dass neben erneuerbaren Energien, Energieeffizienz, KWK auch wichtige Technologien wie Carbon Capture, Utilisation and Storage (CCUS), Wasserstoff und kohlenstoffarme Gase abgedeckt und somit laut Beihilfeleitlinien förderfähig sind. CCUS und Wasserstoff sind Technologien, die maßgeblich zur Erreichung der Klimaneutralität beitragen werden. Deshalb könnte eine eigene Kategorie dafür vorgesehen werden.

Weiters wird begrüßt, dass die LL konkrete Vorgaben für CO₂-Differenzverträge (CCfD) macht, wobei wir hinterfragen, ob der ETS-CO₂-Preis der geeignete Referenzwert ist. Mit Bezug auf die internationale Wettbewerbsfähigkeit und einen fehlenden effektiven Carbon Leakage Schutz, könnte dieser Referenzwert zu einer nicht effektiven Beihilfe führen. Langfristig wäre ein internationaler CO₂-Preis zielführend.

Eine Absenkung der Bagatellgrenze von 1 MW auf 400 kW bietet die Möglichkeit, mehr potenzielle Wettbewerber in die Ausschreibungen zu integrieren. Fraglich ist, ob der neue Grenzwert nicht zu niedrig angesetzt ist. Dies wäre zu überprüfen, da es sich bei kleineren Projekten häufig um Einmalinvestitionen handelt.

Investitionsbeihilfen (investment aid) an Unternehmen sind ein Finanzierungsanschub und keine Dauerförderung. Daher wird der Wettbewerb weniger verzerrt als bei einer Förderung des

laufenden Betriebs (operating aid). Des Weiteren soll es insbesondere keinen Anreiz für Anlagen geben, unter ihren kurzfristigen Grenzkosten zu bieten und eine Förderung bei negativen Preisen soll ausgeschlossen werden. Beide Ansätze stärken die Kosteneffizienz und sind daher zu unterstützen.

Fossile KWK-Anlagen und Biomasseanlagen sollten auch nur dann eine Förderung erhalten, wenn dadurch nicht die Erzeugung von Strom und/oder Wärme aus anderen erneuerbaren Quellen, die keine Luftverschmutzung verursachen, verdrängt wird. Dadurch erhöhen sich die Marktchancen dieser Technologien und reduzieren den Förderbedarf. Jedenfalls sichergestellt werden muss, dass wärmegeführte Anlagen, die vor allem zur Eigenversorgung in der Industrie eingesetzt werden, von dieser Anforderung ausgenommen sind.

Zu 4.2 Aid for the improvement of the energy and environmental performance of buildings

Es ist nicht nachvollziehbar, warum nationale Fördermaßnahmen im Gebäudebereich als staatliche Beihilfe im Sinne des Artikel Art. 107 Abs. 1 AEUV gelten sollten. Die Investitionen in Gebäudesanierung beispielsweise verändern keinesfalls die Handelsbeziehungen zwischen den Mitgliedstaaten in einer Weise, die dem gemeinsamen Interesse zuwiderläuft. Eine spürbare wettbewerbsverzerrende Wirkung bezogen auf Unternehmen ist - auch bei unterschiedlicher Ausgestaltung in den einzelnen Mitgliedstaaten - jedenfalls nicht zu erkennen.

Grundsätzliche Regelungen in Bezug auf Förderungen könnten auch im Rahmen der Überarbeitung der Gebäudeeffizienz-RL (EPBD), die für das 4. Quartal 2021 angekündigt ist, festgehalten werden.

Wir lehnen verpflichtende Mindestenergieeinsparquoten ab, da diese unserer Einschätzung nach aufgrund mangelnder Leistbarkeit einen gegenteiligen Effekt bewirken würden. Im Sinne einer funktionierenden Renovierungswelle muss es weiterhin möglich sein, dass Einzelmaßnahmen förderfähig sind.

Zu 4.3 Aid for clean mobility, insb. zu 4.3.2. Aid for the deployment of recharging or refuelling infrastructure

Die zu 4.2 getroffenen Anmerkungen sind auch hier zutreffend. Nichtdiskriminierende nationale Förderungen für den Ausbau der Lade- und Tankinfrastruktur führen zu keiner spürbaren Verzerrung des Wettbewerbs.

Zu 4.4 Aid for resource efficiency and for supporting the transition towards a circular economy

Im Gegensatz zu den bestehenden LL zur Ressourceneffizienz führt der Entwurf der neuen LL in RZ 204 und 205 ein Investitionsverbot ein, wenn es sich bei der zu fördernden Investition um eine „wirtschaftlich rentable Praxis“ handelt. Dieses Konzept ist weitaus difuser als die Kommissionserläuterungen in RZ 152 ff. der geltenden LL. Jedenfalls wäre das Konzept näher zu erläutern, weil die Rentabilität bei Ressourceneffizienz und Kreislaufwirtschaft volatil sein kann und wohl kein pauschaler Ausschluss möglicher Rentabilität in Hinblick auf die Erreichung der Umweltziele sinnvoll ist. Klar ist, dass Mitnahmeeffekte minimiert und vermieden werden müssen.

Ist die Auslegung zu Rz 204 tatsächlich so zu verstehen, dass jegliche mögliche künftige Rentabilität eines Projektes zu einer beihilfenrechtlich negativen Bewertung führt und so alles Bekannte nicht gefördert werden kann, ist der erste Satz der Rz 205 im Verhältnis zu Rz 204 nicht nachvollziehbar. Wenn die getrennte Sammlung und Sortierung in einem MS nicht ausreichend entwickelt ist, könnte dieser MS mit bekannten und praktizierten Geschäftspraktiken und Verfahren auf einen höheren Stand gebracht werden. Die Beihilfen für etablierte Geschäftspraktiken wären aber nach Rz 204 ausgeschlossen. Daraus ergäbe sich ein unauflösbarer Widerspruch.

Zu 4.5 Aid for the prevention or the reduction of pollution other than from greenhouse gases

Flexibilisierung ist bei der Luftreinhaltung angesagt: Der derzeit eingeschlagene Weg, den Mitgliedstaaten unrealistische Grenzwerte vorzusetzen, sie bei der Einhaltung im Stich zu lassen und sie mit EuGH-Verfahren und Strafzahlungen einzudecken, muss in einen kooperativen Ansatz umgewandelt werden. Die EK sollte die Mitgliedstaaten bei der Bewältigung von Luftschadstoff-Hotspots unterstützen. Bei der künftigen Gesetzgebung braucht es mehr Flexibilität, Aufschubfristen, Ausnahmen und spezifische Regelungen für Regionen mit ungünstiger topographischer Lage sowie vor allem realistische und einhaltbare Grenzwerte. Die Umwelt- und Energiebeihilfen könnten dazu einen wertvollen Beitrag leisten. Wir schlagen folgende Ergänzung zu Rz 224 vor:

Darüber hinaus können Beihilfen für Maßnahmen von Unternehmen, die zur Einhaltung der Grenzwerte in Gebieten und Ballungsräumen beitragen, in denen gesundheitsrelevante Überschreitungen der Grenzwerte der Luftqualitäts-Richtlinie 2008/50/EG für einen bestimmten Schadstoff aufgrund nachweisbar ungünstiger topografischer oder klimatischer Bedingungen gewährt werden. Im Rahmen der Nachweise ist ein angestrebter Zielerreichungspfad in Bezug auf die zu treffenden Maßnahmen darzustellen. Dies kann auch in Kombination mit EU-Förderprogrammen oder EU-Zuschüssen geschehen.

Zu 4.7 Aid in the form of reductions in taxes or parafiscal levies

Nachdem auch bestimmte Steuervorschriften dem EU-Beihilfenrecht unterliegen können, ist derzeit nicht klar, ob die geplanten Änderungen der gegenständlichen Leitlinien eine Auswirkung auf zurzeit nach geltendem österreichischen Recht bestehende Energiesteuerbegünstigungen haben. Insbesondere stehen folgende Bestimmungen zur Diskussion:

- **Energieabgabenvergütungsgesetz**

Durch die Energieabgabenvergütung besteht für energieintensive Herstellungsbetriebe die Möglichkeit zur teilweisen Rückerstattung von Steuerbeträgen betreffend Elektrizität, Erdgas, Kohle, Heizöl und Flüssiggas.

- **Elektrizitätsabgabe**

Seit 1.1.2020 ist mittels Photovoltaik selbst erzeugte elektrische Energie, welche nicht ins Netz eingespeist, sondern selbst verbraucht wird, von der Elektrizitätsabgabe befreit.

Bis zu 25.000 kWh pro Jahr ist mittels erneuerbarer Primärenergieträger selbst erzeugte elektrische Energie, welche nicht ins Netz eingespeist, sondern selbst verbraucht wird, von der Elektrizitätsabgabe befreit. Unter diese Bestimmung fallen im Unterschied zur

oben genannten speziellen Abgabenbefreiung nicht nur Photovoltaikanlagen, sondern auch alle anderen erneuerbaren Energiequellen wie z.B. Kleinwasserkraftwerke und mit Biogas oder Windenergie betriebene Kraftwerke. Die Grenze von 25.000 kWh ist ein Freibetrag. Wird daher über diese Grenze hinaus Strom erzeugt, so bleiben 25.000 kWh abgabenfrei und es wird nur die darüber hinaus gehende Energie besteuert.

Ab 1.7.2021 wird mittels erneuerbarer Primärenergieträger von Eisenbahnunternehmen selbst erzeugter Bahnstrom, soweit dieser von Eisenbahnunternehmen zum Antrieb und Betrieb von Schienenfahrzeugen verwendet wird, von der Elektrizitätsabgabe befreit.

- **Erdgasabgabe**

Seit 1.1.2020 ist Biogas, aus erneuerbaren Energieträgern hergestellter Wasserstoff sowie aus erneuerbarem Wasserstoff hergestelltes synthetisches Gas von der Erdgasabgabe befreit.

- **Mineralölsteuer**

Mineralöle ausschließlich aus biogenen Stoffen sind von der Mineralölsteuer befreit. Darüber hinaus sind in § 3 MöStG für die unterschiedlichsten Kraftstoffe vergünstigte Steuersätze festgelegt, bei denen ein Mindestanteil an Biokraftstoffen beigemischt wurde.

Sofern die oben genannten Bestimmungen als Beihilfen im EU-beihilfenrechtlichen Sinne zu werten sind, ist eine mögliche Auswirkung durch die gegenständlichen Leitlinien derzeit nicht klar. Aus wirtschaftlicher Sicht ist es unerlässlich, dass die oben genannten Energiesteuerbegünstigungen soweit wie möglich bestehen bleiben.

Zu 4.8 Aid for the security of electricity supply

Die WKÖ unterstützt die geplanten Regelungen weitestgehend. Versorgungssicherheit muss durch einen effizienten Ausbau der Netzinfrastuktur sichergestellt werden. Derartige Investitionen sind deshalb als zu fördernde wirtschaftliche Tätigkeit anzuerkennen.

Essenziell ist, dass die Leitlinien im Einklang mit einschlägigen sekundärrechtlichen Vorgaben aus der Strombinnenmarktverordnung (VO (EU) 2019/943) stehen. Zum Beispiel ist in der Strombinnenmarkt-Verordnung geregelt, dass effiziente, wettbewerbliche Energy-Only-Märkte das zentrale Ziel sind. Kapazitätsmechanismen dienen nur als letztes Mittel. Die Kohärenz mit der VO (EU) 2019/943 muss überprüft werden.

Zu 4.9 Aid for energy infrastructure

Die Nutzung und Umrüstung der bestehenden Gasinfrastruktur erhöht die Belastbarkeit des Energiesystems, indem sie überschüssigen Strom aus erneuerbaren Energien integriert, Engpässe im Stromnetz reduziert und vor allem die notwendige Flexibilität und Energiespeicherung ermöglicht. Ziel ist die Umstellung der Gasversorgung auf bis zu 100 % Wasserstoff und anderer erneuerbare Gase.

Durch die Nachrüstung und Umstellung bestehender Gasnetze auf Wasserstoff kann eine THG-Reduktion zu ca 25 % der Systemkosten erzielt werden, als mit dem Aufbau einer neuen, speziellen Wasserstoffinfrastruktur.

Wir unterstützen, dass die LL Beihilfen für Investitionen in die Gasinfrastruktur ermöglichen, sofern diese Infrastruktur für Wasserstoff und erneuerbare Gase bzw. Brennstoffe nichtbiologischen Ursprungs genutzt werden kann.

Zu 4.11 Aid in the form of reductions from electricity levies for energy-intensive users

Neben dem Marktpreis für Energie sind die Netzentgelte der zweite große Kostenblock auf der Stromrechnung. Auch wenn für energieintensive Produktionsbetriebe in der Regel verhältnismäßig geringere Netzgebühren anfallen, da sie an eine höhere Netzebene angeschlossen sind (und daher die niedrigeren Netzebenen nicht mitnutzen), sind diese Belastungen doch erheblich. Daraus ergeben deutliche Nachteile im internationalen aber auch besonders im europäischen Wettbewerb. Als Resultat kann es zu einer Verlagerung von Wertschöpfung und letztlich Carbon Leakage kommen.

Solange es kein Level-Playing-Field bei den Klimaschutzmaßnahmen gibt und die EU hierbei besonders ambitioniert ist, braucht es Instrumente, die die internationale und auch die innereuropäische Wettbewerbsfähigkeit besonders betroffener Unternehmen sicherstellen.

Im vorliegenden Vorschlag wird festgehalten, dass hohe Strompreise die Elektrifizierung von Produktionsprozessen behindern bzw. sogar verhindern können. Die Vorgaben im Kapitel 4.11. passen jedoch dazu nicht, da Ermäßigungen bei den Strompreisbestandteilen nur dann möglich sein sollen, wenn in einem Sektor die Gefahr besteht, dass Produktion und Emissionen ins nichteuropäische Ausland verlagert werden. Das Kapitel 4.11. sollte dahingehend überarbeitet werden.

Für die Entlastung bei Umlagen auf den Strompreis sieht der Kommissionsentwurf eine drastische Kürzung der Liste derjenigen Sektoren vor, die eine Ausgleichsregelung in Anspruch nehmen können. Dies konterkariert die Transformation von Produktionsprozessen und schützt nicht vor Carbon Leakage. Deshalb muss die Sektorenliste der bisher geltenden LL weiter aufrechterhalten werden, damit wichtige Sektoren (zB 2332 Herstellung von Ziegeln und sonstiger Baukeramik, 2351 Herstellung von Zement, 2352 Herstellung von Kalk und gebranntem Gips) nicht gestrichen werden.

III. Inhaltliche Spezifizierungen der Industrie

Die Bundessparte Industrie hat aus ihrem spezifischen Blickwinkel eine umfangreiche Stellungnahme ausgearbeitet, die dem Oben gesagten nicht widerspricht, aber in vielen Bereichen in stärkere Details geht. Daher stellen die nachfolgenden, in Englisch abgefassten Ausführungen einen integralen Bestandteil der WKÖ-Stellungnahme dar:

Comments from WKÖ Industry Division on Draft Communication from the Commission
“Guidelines on State Aid for climate, environmental protection and energy 2022”

Our key messages

Protection of energy intensive industries (EIs) against undue energy costs

- We strictly oppose the non-eligibility of a number of important energy intensive sectors, which face high extra costs on national level. Several elements of the draft proposal on the CEEAG on reductions from electricity levies for energy-intensive users pose an excessive burden on energy intensive industries, increasing the risk of carbon leakage, and discourage the uptake of low carbon technologies that rely directly or indirectly on electricity.
- State aid intensity for reductions, which is limited at 75% in the draft CEEAG, should be maintained at 85% as in the current phase 2013-2020. Protection for the most exposed undertakings should be maintained at the level of 0.5% GVA, instead of the proposed 1.5% GVA.
- The eligibility criteria do not include the option of 4% trade intensity and 20% electro-intensity that was present in the previous guidelines. Due to that, the list of eligible sectors exclude some key sectors for the decarbonization from the scope of application of the reductions. These are integral parts of the value chains today, and will be even more crucial for the transition to low carbon technologies in the nearest future.
- The above reductions/exemptions shall apply analogously to other charges that directly or indirectly fund the implementation of EU climate change policy objectives set out in the European Green Deal and that result in undue energy costs for EIs, such as those related to capacity mechanisms, network costs, and other similar charges.
- Compensation should not be made conditional. If now state aid is made conditional to additional measures to be taken by a company, de facto it is not anymore a (partial) reimbursement of incurred costs as it requires additional costs to the company. Moreover, related proposals do not reflect the specificities of different industrial sectors and of companies and might lead to different and disproportionate outcomes.

Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy

- Recognise that carbon pricing policies (e.g. ETS) do not counter equally the problem of externalities for all sectors and thus allow carbon contracts for difference (CCfDs) to cover the full abatement costs of the new low-carbon processes for sectors mostly exposed to international competition.
- Conversion to low carbon production processes in the EU will often occur in existing facilities (brownfield). The CEEAG should envisage also aid for dismantling CO₂ intensive production sites.
- Support for the use of electricity made from renewable energy sources in energy-intensive production processes by levelling the costs of long-term power purchase agreements

The current Draft of the revised Guidelines triggers a number of fundamental due process questions that we wish to underline:

- The change of methodology whereby trade intensity has increased from 10% to 20% and where the eligibility on the basis of a 4% trade intensity and a 20% electro-intensity has been eliminated, has not been explained
- The suggested criteria therewith put a disproportionate emphasis on trade intensity whereas the impact of CO2 costs from energy on GVA weighs heavily on companies' cost base and impacts on their competitiveness, independently from the trade intensity of a sector
- In addition, the calculation method of trade intensity does not reflect negative market impacts: for example, in the period 2017-2019, building materials imports in the EU have doubled, i.e. cement imports have increased by 50% and importers have consistently applied lower prices than EU operators, therewith directly impacting the latter's market share; in some sectors exports have dropped by more than 50% and cement exports by 20% with export prices no longer competitive on the destination markets; yet, the effect of increased imports and decreasing exports, based on the trade intensity formula, is a decrease of trade intensity from 10.3% in 2017 to 9.2% in 2019
- The non-eligibility of important industry sectors like cement, lime and plaster, bricks, roof tiles and others for levy exemptions will only further exacerbate these effects and allow increased imports and a decrease of exports.

Detailed remarks

2.4.; 20 (a) and (b): The definition of "clean vehicles" used in the draft revised guidelines is unclear and inconsistent. While vehicles from categories M1, M2 and N1 (passenger cars, vans and light-duty vehicles) are following the definition of Directive (EU) 2019/1161, M3, N2 and N3 vehicles (buses, coaches, small trucks, and heavy-duty vehicles) are applied criteria coming from Regulation (EU) 2019/1242.

The European Commission is invited to explain the reasoning behind this choice, and more specifically the reason why the definition of clean vehicles already provided by Directive (EU) 2019/1161 has not been applied consistently to all vehicle segments

2.4.; 28: district heating' or 'district cooling' means district heating or district cooling, as defined in Article 2, point (19), of Directive (EU) 2018/2001

2.4.; 29: district heating and cooling systems', consisting of heat generation facilities (heating/cooling production plants including combined heat and power plants), the heating/cooling storage and distribution network (both 'primary'- or transmission- and 'secondary' network of pipelines to supply heat to consumers). Reference to district heating is to be interpreted as district heating and/or cooling systems, depending on whether the networks supply heat or cooling jointly or separately

2.4., 35 (d) (i): We support the section on "Aid for energy infrastructure". In particular, as some sectors of industry deploy carbon capture, it will be critical to receive an appropriate level of support for CO2 transportation networks to bring the CO2 to storage or utilisation sites. We however note that the definition of CO2 infrastructure in paragraph 35 is overly restrictive by including only two types of CO2 utilisation, namely "using carbon dioxide as feedstock or to enhance the yields of biological processes". This definition does not reflect the variety of CO2 utilisation projects ongoing, which can cover the production of synthetic fuel, use of CO2 in

chemical processes and permanent storage through mineralisation. We would therefore urge to use a broader definition. Finally, we would stress that in addition to pure “energy infrastructure” like CO2 pipelines, it would be highly beneficial to recognise other transport modes such as ships, trucks and barges under the State Aid Guidelines. This would support the take-up of CCUS, including in regions where building pipelines may not be economical; We also welcome the inclusion of hydrogen pipelines in the scope of the State Aid Guidelines

2.4 After 62 new ‘waste heat and cold’ means unavoidable heat or cold generated as by-product in industrial (including residual waste incineration plants) or power generation installations, or in the tertiary sector, which would be dissipated unused in air or water without access to a district heating or cooling system, where a cogeneration process has been used or will be used or where cogeneration is not feasible, as defined in RED article 2 point (9) of Directive 2018/2001

3.1.1., margin number 24: Add the wording “industrial policy in the context of the Green Deal”. This is to give some extra value to the industrial strategy.

3.2.1.2, margin number 51: Please modify, as we want to be able to use the ETS IF methodology and also may want to be able to apply CAPEX and OPEX directly: *“A counterfactual scenario may sometimes occur where the beneficiary is not carrying out an activity or investment, or continuing its business without changes. Where evidence supports that this is the most likely counterfactual, the net extra cost may be approximated by the negative NPV of the project in the factual scenario without aid over the project lifetime (hence, implicitly assuming that the NPV of the counterfactual is zero). In particular, this can be the case for infrastructure projects. In the case of aid for industrial processes the net extra cost may be calculated as the difference of the Levelised Cost of Product (LCOP), using the WACC as discount rate, with market prices of the products concerned”*.

4.1.3.1., margin number 78: modify the last sentence: *“However, while the Union’s ETS and related policies and measures internalise some of the costs of greenhouse gas emissions, they may not yet fully internalise those costs and, due to the public goods character of a stable global climate, markets may not be able to accept higher prices of products and services produced with low or nil GHG emissions”*. The basis for all state aid is “market failure” and the kind of market failure most important for basic materials is the inability of markets to take the higher prices due to the more costly production (this is caused by the public good nature of the stable climate). This kind of market failure is not mentioned in margin numbers 33 to 36, but it could be added here. This could make the introduction of any kind of aid more easy.

4.1.3.3., margin number 83 (g) new: introduce a new sub-paragraph in *“a measure aims at supporting industrial activities characterized, in comparison to other economic activities, by a combination of high absolute GHG emissions, high specific GHG emissions, high abatement costs per GHG avoided and long investment cycles”*. To allow focused calls directed to Energy Intensive Industries

4.1.3.5., margin number 89: modify the first sentence: *“Aid for reducing greenhouse gas emissions should in general be granted through a competitive bidding process as described in points 48 and 49. For aid to industrial processes non-price selection criteria related to GHG emission reductions may account for up to 50% of the weighting of all the section criteria”*. We may want, as a general rule, be subject to competition rather by merit assessment than bidding.

4.1.3.5., margin number 92 (b) iv (new): add a new sub-paragraph “for industrial processes projects - project with full project costs of below 15 Million €”. Small projects should benefit from an exemption from bidding.

4.1.3.5., margin number 93: please modify *“For an individual aid award without a competitive bidding process, Member States must justify the proposed aid levels based on an individual business plan for the specific project to be aided, including all the elements listed in points 50 and 51 or those related to 102a new, as appropriate”*. We may want to be able to use the ETS IF methodology and also may want to be able to apply CAPEX and OPEX directly.

4.1.4., margin number 97, please modify: *“Sections 3.2.2 margin number 65 and 3.3 does not apply to measures for the reduction of greenhouse gas emissions”*.

4.1.4., Add a new margin number 102a: “For aid to industrial processes the net extra cost may be calculated as the difference of the Levelised Cost of Product (LCOP), using the WACC as discount rate, with market prices of the products concerned”. We may want to be able to use the ETS IF methodology and also may want to be able to apply CAPEX and OPEX directly.

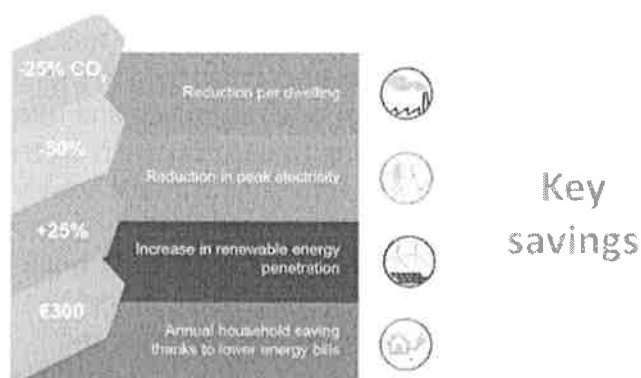
4.1.4., margin number 102: please modify: *“Beneficiaries of the measure should only be exposed to risks that they can contribute to managing, for example risks associated with the curtailment of renewable energy linked to periods of excess production or to insufficient transmission”*. Risk reduction for industry.

4.1.4., margin number 103 second sentence: please modify: *“Aid which covers costs mostly linked to operation rather than investment should only be used where the Member State clearly demonstrates that this results in more environmentally friendly operating decisions or, in the case of aid for industrial processes, also allow environmentally friendly investment decisions”*. For projects which have the majority of their additional cost in the form of OPEX, without a modification to this sentence, it could happen that aid will be reduced to OPEX only but not CAPEX.

4.1.4., Footnote 61 to margin number 103: please modify: *“A contract for difference entitles the beneficiary to a payment equal to the difference between a fixed ‘strike’ price and a reference price - such as a market price, per unit of output. They have been used for electricity generation measures in recent years but could also involve a reference price linked to the ETS GHG emissions pricing - i.e. ‘carbon’ contracts for difference”*. On national level there might be national Carbon pricing systems in addition to the ETS. Furthermore, in the absence of complementing CL measures to the ETS, designing a CCfD with reference to the ETS (and not a global CO2 price) will result in ineffective aid levels

4.1.4., new paragraph in margin number 110a new: “Industrial production installations using fossil fuels or fossil-based fuels and energy are not deemed to stifle innovation, efficiency and the adoption of cleaner technologies, are not deemed to displace investments into cleaner alternatives, are not deemed to lock in technologies hampering the use of cleaner solutions, are not deemed to significantly reduce the overall environmental benefit of the investment and are also not deemed to aggravate negative environmental externalities in the longer term, if it is demonstrated that their operation rely on bridging fuels only with the aim to allow the investment into low carbon technologies which are designed and able to run on GHG emission free fuels, Hydrogen or other net GHG emission free gases”.

4.2., margin number 116: we suggest to include a clear reference to thermal mass as part of paragraph 116. Support for development of projects with structural thermal energy storage elements have a positive effect on the energy consumption of the built environment and therefore should be added as beneficiaries (e.g. Thermally Activated Building Structures TABS). The thermal storage capacity offered by the structure to provide flexibility in energy grids and boost the uptake of renewable energy renewable energy which can lead to:



4.3: State aid guidelines should be aligned with existing EU legislation, stimulating the integration of renewable fuels in transport. As stated by the draft communication of the European Commission, one of the objectives of the revision of the state aid guidelines is to align and ensure coherence with the relevant EU legislation. The guidelines should allow Member States to support the uptake of all sustainable and renewable fuels covered by REDII (including biomethane) to fulfil their targets set by the Renewable Energy Directive, particularly on the minimum 14% share of renewable energy in transport.

State aid guidelines should effectively support consumption of renewable fuels in road transport

State aid guidelines should pay a closer attention at supporting both the production of biomethane, and its actual consumption in road transport. The focus should not be put on the drivetrain technology (ICE vs EVs, since these technologies are complementary), but rather on the type of fuel or energy used to power vehicles. The fuel dimension is what needs to be primarily taken into account to assess the real environmental impact of the vehicles, and to accelerate transport decarbonisation.

Natural gas vehicles and the associated refuelling stations network are 100% compatible with renewable gas and enable a progressive transition of the transportation system, ensuring affordability and at the same time good environmental performance.

Currently, gas-based mobility operates with a share of more than 17% of biogas on European roads, already cutting GHG emission down to almost 40% (compared with diesel on a well-to-well basis)¹. According to NGVA Europe's estimations², with the proper policy incentives, this share could be raised to at least 40% of biogas by 2030, resulting in a -55% GHG emission reduction. For these reasons, and in order to be coherent, the guidelines should not only allow aid for producing biogas (point 76), but also fully support its actual distribution in refuelling stations and its consumption in CNG/LNG vehicles. This also makes sense from a cost efficiency

¹ <https://www.ngva.eu/medias/already-17-renewable-gas-used-by-the-mobility-sector-in-europe/>

² <https://www.ngva.eu/medias/ngva-europe-comments-eu-2030-climate-target-plan/>

perspective. Indeed, a recent study from Frontier Economics on ‘CO2 Emission Abatement Costs of Gas Mobility and other Road Transport Options’³ demonstrated that gas mobility can contribute to reducing GHG emissions in road transport at comparably low system cost.

State aid guidelines should foster competition in the internal market among all existing solutions to decarbonise mobility.

The draft communication of the European Commission explicitly stresses the need to support a cost-effective transition to climate neutrality while ensuring a level-playing field in the internal market. For this reason, the guidelines should adopt a technology open approach and refrain from excluding mobility technologies that are already contributing to decarbonise road transport today. This is the case for CNG and LNG vehicles and associated refuelling stations network, as explained previously.

CNG and LNG vehicles are a mature technology, which yet represents a comparably small share of the European fleet. Contrary to what is stated by the European Commission in its communication (point 161 and 184), aid for the acquisition of these clean vehicles and deployment of associated refueling infrastructure would therefore not result in a distortion of the competition within the internal market. What would rather unduly distort competition is restricting aid to only a limited set of options, the so-called “zero emissions” solutions (electric and hydrogen). State aids should instead guarantee a level-playing field among all existing solutions to decarbonise transport, including CNG and LNG vehicles and associated refueling infrastructure. This would contribute to diversify clean mobility options for consumers and end-users, and result in faster decarbonisation of the road transport sector in a cost effective way.

4.3.1.5 Avoidance of undue negative effects on competition and trade and balancing

Requirements on demonstrating the lack of availability on the market of cleaner alternatives (points 162, 185)

This requirement applied to CNG/LNG vehicles and refuelling infrastructure is unclear. The term of “*cleaner alternatives*” in point 162 and 185 remains undefined and not adequately supported by clear scientific basis or evidence. Only a well-to-wheel assessment can comprehensively grasp the real environmental impact of different transport solutions, as it encompasses GHG emissions coming from the fuel production until its actual use in the vehicles.

The same remark goes for the term “*available on the market*”, as well as the choice to define “*short term*” as a period limited to 4 years, which are not based on any impact assessment. We note that these requirements are based on the assumption made in point 161 by the draft revised guidelines that “*measures that incentivise new investments in natural gas-fuelled (including CNG and LNG) transport vehicles may lead to a reduction in greenhouse gas emissions and other pollutants in the short run but aggravate negative environmental externalities in the longer run, compared to alternative investments*”. This statement is not supported by any thorough scientific analysis completely overlooks the current trends of biomethane growth. Therefore it does not represent a solid justification for the exclusion of CNG/LNG vehicles and refuelling infrastructure from the scope of activities eligible to state aids.

The European Commission is therefore required to provide with clearer definitions of the different terms highlighted previously, supported by evidence-based assessment of the reasoning used to disqualify state aids to CNG/LNG vehicles and refuelling infrastructure.

³ <https://www.frontier-economics.com/media/4643/carbon-abatement-costs.pdf>

Requirements of demonstrating a minimum 20% share of biogas for CNG/LNG vehicles and refuelling stations (points 162 and 185)

The uptake of biogas and biomethane considerably varies across member states. For this reason a 20% minimum threshold would simply jeopardize the efforts already made by those MS which started to invest in biogas only recently thanks to the supportive legislative framework provided by RED II (such as Italy, Bulgaria, Belgium, Hungary, etc.). Furthermore, the criteria is arbitrary, as it is only applied to CNG and LNG, while considering every share of fossil vs renewable as satisfactory when applied to electricity or hydrogen, which still remain mostly fossil-based.

The European Commission should clarify the rationale and the scientific basis for the introduction of a 20% minimum threshold, and more specifically to justify why such a method is not applied to other fuels or energy carrier such as electricity and hydrogen.

4.4.2., margin number 192: we support a transition towards a circular economy. For example, the Cement Industry's contribution is made through two different channels:

Co-processing, where non-recyclable-waste and biomass waste are used as both alternative fuel and raw material to replace primary fuels and raw materials (i.e. for energy recovery and material recycling). Co-processing allows for considerable CO₂ savings in the cement industry

Concrete, cement's end product, which is fully recyclable and can be turned into aggregates for additional concrete or roads application

We regret that the draft Guidelines do not recognise co-processing as a specific activity which allows to re-use non-recyclable waste that would otherwise be incinerated, exported or landfilled. We therefore suggest the inclusion of a point 192 (e) as follows: *"investments for the use of non-recyclable waste in industrial processes, where such use allows for both energy recovery and the reduction of CO₂ emissions from industrial processes"*.

4.11.2., margin number 354 second sentence: please modify: "This Section does not cover levies which reflect part of the cost of providing electricity to the beneficiaries in question, but does so for biogas. With the exception of biogas fuel, levies on the consumption of other forms of energy, in particular natural gas, are also not covered by this Section." Biogas is regulated under this chapter and thus the possibility for exemptions must be reintroduced here.

4.8.4.5., margin number 324: please add: "To avoid undermining incentives for demand response and exacerbating the market failures that lead to the need for security of supply measures, and to ensure the security of supply intervention is as limited in size as possible, the costs of a security of supply measure should be borne by the market participants who contribute to the need for the measure. For example, this may be achieved by allocating the costs of a security of supply measure to electricity consumers in periods of peak electricity demand. Energy-intensive users may be granted reductions and exemptions established by analogous application of the relevant provisions of Chapter 4.11 ".

4.9.3.1., margin number 336: please add a sentence to Chapter 4.9.3.1 margin number 336: "Energy infrastructure is typically financed through user tariffs. For many infrastructure categories those tariffs are subject to regulation, in order to ensure the necessary level of

investments while preserving user rights. Energy-intensive users may be granted reductions and exemptions established by analogous application of the relevant provisions of Chapter 4.11".

4.10 Aid for district heating or cooling

The draft rules are confirming the current approach by allowing aid for a/ the development of new Efficient DHC, b/ the upgrade of existing DHC and c/ for non-Efficient networks to allow for their transition towards Efficient DHC status.

The extension of the funding gap approach to include heat generation will ensure that the intensity of the aid can be adapted to national/local situations and fit for the purpose of developing sustainable solutions.

The forthcoming revision of the GBER should support this approach by extending the scope of aid that can be granted to projects without prior notification when the scheme is already in conformity with the Guidelines.

4.10.2 margin number 341 and 342: As under current Guidelines, the set of future rules should make clear that aid can target the different pillars of a District Heating system independently. For instance, aid should be available for generation, thermal storage or the network itself. We suggest adding a reference to the definition of waste heat, as set out in Directive 2018/2001. The extension to storage will support cross-sector integration, in particular the integration of renewable electricity in systems combining large-scale heat pumps with waste heat and high-efficiency CHP⁴. Additionally, this point should also refer to 'customer facilities' - and section 4.1 - so that the connection of a building to a network and the related technical installations within the building that allow the DHC systems to perform optimally are covered.

(341) This Section applies to support for the construction or upgrade of energy efficient district heating and cooling systems. Supported investments can concern heating or cooling generation and or storage plants or the distribution network or both.

(342) Such aid measures typically cover the construction or upgrade of the generation unit to use renewable energy, waste heat, or highly efficient cogeneration or including thermal storage solutions, power-to-heat solutions or the upgrade of the distribution network to reduce losses and increase efficiency, including through smart and digital solutions including heating and cooling equipment within customers premises as referred to under point 117.

4.10.2 margin number 343: The text should clarify that systems should fulfil the status of EDHC definition as set out in EED 2(41) - instead of referring to 'energy efficiency standard'; the text should also refer to commitments made by operators - checked by national authorities (Member States).

(341) Where a Member State invests grants aid for in the upgrade of a district heating and cooling system which does not fulfill the definition of Efficient DHS, as defined in article 2 point (41) of Directive 2012/27 without meeting the standard of energy efficiency, it needs to require the commitment of the operator to start the works to reach that status standard within three years following the upgrade works.

⁴ "The new State aid framework should uphold the opportunity to support high-efficient heat generation and CHP systems that have a positive impact in terms of CO₂ reductions in the field of generation district heat, also from renewable sources. Additionally, the State aid framework should also support combinations of such heat generation through renewable electricity using heat pumps, waste heat and power to heat installations." (Statement on 'A State Aid Framework fit for the Green Deal' dated 31 May 2012 signed by Germany, Sweden, The Netherlands, Latvia, Ireland and Luxembourg)

4.10.3, margin number 344: While we agree with the reference to waste to energy and the conditioning of the aid on the respect of the waste hierarchy the text should distinguish waste heat, whose use is promoted by Directive 2018/2001, from waste to energy. We suggest adding a reference to the definition of waste heat, as set out in Directive 2018/2001.

(344) Sections 3.2.1.1. and 3.2.1.2. do not apply to aid to district heating or cooling. The Commission considers that State aid can contribute to addressing market failures by triggering the investment needed for the establishment, expansion and upgrade of ~~creation~~ of energy efficient district heating and cooling systems as well as investment into non-efficient systems with a view to gradually make them efficient. In addition, State aid for energy efficient district heating and cooling systems using waste, including waste heat, as input fuel can make a positive contribution to environmental protection, provided that they do not circumvent the waste hierarchy principle.

4.10.5, margin number 347: The changes we suggest are meant to provide clarification for authorities that the operator can be supported in upgrading and expanding a network, even in cases where this could lead to a temporary increase of production based on the most polluting fuels (e.g. to connect a new city area or a specific site), provided such developments are part of and consistent with the overall decarbonisation commitment of the operator and related investment plans are in line with the 2030 climate target and the 2050 climate-neutrality objective.

(347) Section 3.2.2. does not apply to aid for district heating or cooling. The Commission considers that the upgrade or construction of district heating and cooling systems which rely on the most polluting fossil fuels such as coal, lignite, oil and diesel, have negative consequences on competition and trade which are unlikely to be offset unless the following cumulative conditions are fulfilled:

- a/ the support is limited to ~~the upgrade of~~ the distribution network;*
- b/ the distribution network is or will become fit for the transport of heat or cooling generated from renewable energy sources, waste heat or other climate-neutral sources;*
- c/ the investment does not result in increased generation of energy from the most polluting fossil fuels (for example, by connecting additional customers) in the longer run. Any temporary increase in generation from the most polluting fuels must be part of and consistent with the overall decarbonisation commitment of the operator and related investment plan in line with the 2030 climate target and the 2050 climate-neutrality objective as referred to in (d);*
- d/ there is a clear timeline involving firm commitments from the beneficiary of the aid for transitioning away from the most polluting fossil fuels, compatible with the Union's 2030 climate target and the 2050 climate neutrality target.*

4.10.5, margin number 348: As the operator cannot commit as to whether/to what extent climate-neutral fuels will be available⁵, the commitment of the operator should rather be demonstrated by investments into climate-neutral ready facilities. We prefer to refer to a wider category of 'climate-neutral fuels' - e.g. CH₄, methanol and H₂.

⁵ 'We encourage the Commission to consider making investments into 'H2' readiness of new installations eligible for additional support as this avoids sunk costs.' (Statement of Member States above-mentioned page 1)

These investments should take place in a renewed framework to facilitate the deployment of the energy sources needed to feed relevant installations with relevant (climate-neutral) fuels. The same changes should apply to point 110.

*(348) As regards the construction or upgrade of district heating generation installations, measures that incentivise new investments in energy based on natural gas may reduce greenhouse gas emissions in the short run but aggravate negative environmental externalities in the longer run, compared to alternative investments. For those investments in natural gas to be seen as having positive environmental effects, Member States must explain how they will ensure that the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target and, in particular, how a lock-in of the gas-fired energy generation or gas-fired production equipment will be avoided. For example, this may include binding commitments by/from the beneficiary to implement CCS/CCU or substitute natural gas by **investing in facilities ready to use climate-neutral fuels when they are available** or to close the plant on a timeline consistent with the Union's climate targets.*

4.10.5, margin number 349: The case-by-case assessment of the balancing of the aid on local market may lead to uncertainty and in particular discourage national authorities from grant aid for large-scale projects. We suggest that aid for DHC systems is considered compatible when it is framed in an overall national/regional strategy to decarbonize the heating and cooling market and when the system fulfils the definition of Efficient DHC. Such an approach would have the benefit of speeding up approvals - in line with the general positive approach on aid for DHC throughout the draft - while ensuring full coherence with EU and national objectives.

(349) In analysing the impact of State aid for district heating and cooling systems on competition and in balancing it against the supported economic activity, the Commission will carry out a case-by-case assessment balancing the benefits of the project in terms of energy efficiency and sustainability against the negative effects on competition and in particular the possible negative impact on alternative technologies or providers of heating and cooling services and networks, taking into account national strategies for the decarbonization of heating and cooling, security of supply issues and other relevant aspects. Where the district heating system fulfils the definition of Efficient DHC according to Directive 2012/27 the Commission will typically assume that negative effects on competition are outweighed by positive environmental effects.

4.11.2., delete margin number 356: ~~"The Commission considers that Member States may grant reductions to levies under this Section only where the overall cumulative level of these levies (before any reductions) is at least [...] EUR/MWh.~~ Margin number 356 appears to be overly restrictive and biased against larger undertakings.

4.11.3.1., margin number 357: We strictly oppose the non-eligibility of a number of important energy intensive sectors, which face high extra costs on national level. The change of methodology whereby trade intensity has increased from 10% to 20% and where the eligibility on the basis of a 4% trade intensity and a 20% electro-intensity has been eliminated, has not been explained. The suggested criteria therewith put a disproportionate emphasis on trade intensity whereas the impact of CO2 costs from energy on GVA weighs heavily on companies' cost base and impacts on their competitiveness, independently from the trade intensity of a sector. In addition, the calculation method of trade intensity does not reflect negative market impacts.

4.11.3.4., margin number 364: proposal for modification: “(a) implement recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 3 years and that the costs of their investments is proportionate; (b) continuously reduce the carbon footprint of their electricity consumption, so as to cover at least 30 % of their electricity consumption from carbon-free sources; (c) continuously invest a significant share of at least 50 % of the aid amount in projects that lead to substantial reductions of the installation’s greenhouse gas emissions; where applicable, the investment should lead to reductions well below the relevant benchmark used for free allocation in the Union ETS”.

Requirement for continuous improvement is less distorting equal treatment of undertakings than absolute objectives.

Annex 1 establishes a list of eligible sectors under Section 4.11 - defining aid in the form of reductions from electricity levies for energy-intensive users. We are concerned that several sectors (particularly ceramics, glass, households and sanitary goods) , were removed from the list and will no longer be eligible for the reductions from the electricity levies. These sectors and sub-sectors are particularly:

- **Manufacture of household and sanitary goods and of toilet requisites (NACE 1722)**
- **Manufacture of Industrial Gases (NACE 2011)**
- **Manufacture of bricks, tiles and construction products, in baked clay (NACE 2332)**
- **Manufacture of ceramic sanitary fixtures (NACE 2342)**
- **Manufacture of other ceramic products (NACE 2349)**
- **Manufacture of other non-metallic mineral products (NACE 2399) which contains a sub-code for expanded clay**
- **Manufacture of cement (NACE 2351)**
- **Manufacture of lime and plaster (NACE 2352)**
- **Manufacture and processing of other glass, including technical glassware (NACE 2319)**

We are concerned with the lack of transparency on the methodology of the establishment of the list in Annex 1. There is no information given on the indicators and data (eg. years of relevance, electricity price) which were taken into account nor were the results of the assessment published (ie. electro-intensity and trade exposure). This makes it difficult for us to understand why certain sectors were taken out of the Annex 1 list.

In this context it is very problematic that the Manufacture of household and sanitary goods and of toilet requisites (NACE 1722) should no longer be part of the list of eligible sectors for reductions from electricity levies in Annex 1. The manufacturing of hygienic paper products is an energy intensive branch as well as the manufacturing of paper, and many companies are engaged in both branches, often at the same production site. The different treatment of these manufacturing processes in respect of energy consumption does not reflect the similarity of the practical conditions.

The buildings materials industries belong to the most energy-intensive industries in the EU. According to the Cumulative Cost Assessment on the EU ceramic industry (CCA) performed by the European Commission in June 2017, electricity-related costs were the fastest growing regulatory costs, and highest regulatory costs overall. In 2015, which was the most representative year for the CCA, they constituted 45% of all estimated regulatory costs for the bricks sector. Moreover, ceramics is a labour-intensive industry which provides 200 000 direct jobs. That is why the Gross Value Added (GVA) indicator, which is used as profitability indicator when calculating the electro-intensity, is unrepresentative for ceramic sectors as it includes

labour costs. We believe Gross Operating Surplus (GOS) should be used. The GOS measures a sectors' profitability but doesn't include labour costs. It is also easily available on Eurostat. Considering that labour costs represent more than 50% (60% for bricks and tiles) of the GVA in ceramics, the use of GVA to assess the impact of energy costs on competitiveness is extremely inappropriate for ceramics, unless the intention of the regulator is to determine if a sector can absorb energy costs by reducing its work force.


We believe that the criterion of 4% trade intensity and 20% electro-intensity, as used in the previous Energy and Environment Aid Guidelines (EEAG, 2014) for more electro-intensive but less trade-intensive sectors should be kept. For labour-intensive sectors, with a large share of SMEs, GOS should be used to calculate electro-intensity.

We would therefore urge for the final version of the Guidelines to reinsert a 4% trade intensity / 20% electro-intensity criteria based on GOS (not GVA) for eligibility.

The inclusion of the energy intensive sectors on the CEEAG Annex 1 eligibility list is crucial for the future of the industry as electrification is one of the technologies available representing the highest potential for decarbonisation in the ceramics and glass sector. There is no doubt that carbon neutrality will never be achieved in these industries without an increased electrification of the process. To encourage further electrification, it is necessary to allow such incentives as granting exemption from electricity levies.

Wir ersuchen um Berücksichtigung unserer Ausführungen.

Freundliche Grüße



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