
FOEEiG /1/8/2021

Warszawa, 2.08.2021 r.

Forum of Electricity and Gas Consumers ('**FOEEiG**') welcomes the opportunity given by the European Commission to comment on the proposed Climate, Energy and Environmental Aid Guidelines (CEEAG).

FOEEiG is an association of 8 organizations (Chamber of Industrial Energy Producers and Energy Consumers, Economic Chamber of Non-Ferrous Metals and Recycling, Polish Chamber of Chemical Industry, Association of Polish Papermakers, Polish Glass Manufacturers Federation, Polish Cement Association, Polish Lime Association, Polish Foundation for Technical Gases) bringing together a wide group of undertakings conducting their main activities in sectors listed in Annex III to the present EEAG.

Overall, we consider that the published proposal indeed broadens the scope of the Guidelines to new areas and all technologies that can deliver the objectives of Green Deal. Additionally, in principle the compatibility rules are more flexible. Thus, the two main drivers of the revision of the EEAG are in general reflected in the published CEEAG.

However, we think that the approach taken by the Commission in regard to aid in the form of reductions from electricity levies for energy-intensive users is overly strict and should be relaxed in the adopted CEEAG. Based on our experience not only as State aid beneficiaries, but also as major contributors to the financing of the operating aid schemes, we observe that the balance between what the Commission allows in terms of facilitation of new investments and margin for the Member States in terms of distribution of support cost has been disrupted.

Below please find our observations which we believe can further improve the prospective guidelines.

1 Framework considerations

1. European energy intensive industries ('**EIIs**') are enablers of the green and digital transition envisioned by the EU. They are solution providers, often at the start of value chains of products, materials and technologies contributing to reductions of emissions in various sectors of the economy. The EIIs have already contributed to the reduction of the 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 reductions¹.
2. Although the European EIIs are already the global frontrunners of carbon footprint reduction, they will now have to undertake particularly strong effort to cut their emissions even deeper. This inevitably entails further electrification of production processes, which in the case of energy-intensive companies, where electricity represents 30% to 45% of the overall

¹ Masterplan for a Competitive Transformation of EU Energy-intensive Industries Enabling a Climate-neutral, Circular Economy by 2050.

operational costs, raises further challenges. The most significant of these are availability of climate-neutral energy at globally competitive prices and higher investment needs.

3. With regard to competitive energy prices, the industry's access to abundant, competitively priced energy has been consistently identified as the most important framework condition for the industrial transition to climate neutrality. With ambitious decarbonisation targets defined for 2030 and 2050 and the penetration of variable renewable electricity, State aid rules have a crucial role to play to ensure that the total cost of energy is kept at reasonable level. If industrial undertakings move out of Europe, it will amount to the failure of the EU climate policy. This threat has already been reflected in the submissions of the Member States and businesses within the framework of the EEAG public consultation process².

2 Compatibility assessment under Article 107(3), point (c), of the Treaty (section 3 of the CEEAG)

4. In respect of '*identification of the economic activity which is being facilitated by the measure, its positive effects for society at large and, where applicable, its relevance for specific policies of the Union*' (section 3.1.1 of the CEEAG), we consider that points 23 and 24 should mention not only climate and environmental objectives, but should explicitly refer to social acceptance of the energy transition and to the preservation of the competitiveness of the EU industry. The EU should be pragmatic in defining its climate ambitions – recent stresses in the international trade and lack of availability of certain products in connection with the global COVID-19 pandemic constitute clear evidence that Europe cannot afford to have its energy intensive industries relocated to third countries.

Thus, we propose to complement the last sentence in point 23 of the CEEAG in the following manner: '*The aid can also ensure that the activity can continue in the future without creating unacceptable environmental damage and by supporting the creation of new economic activities and services (supporting the development of the so-called 'green economy'), including preservation of the competitiveness of the European industry*'.

5. In our previous submissions we have always supported competitive awards of aid as such method of aid allocation in principle contributes to the reduction of the amount of financial assistance. Thus, we welcome additional guidance provided by the Commission with regard to the design of a competitive bidding process. We also observe that while the currently applicable guidelines introduce the general requirement that the amount of operating aid is determined through a competitive bidding procedure, the draft CEEAG in some areas require that this aid allocation mechanism is extended also to investment aid.

As confirmed by the public consultation regarding the EEAG, while operating aid is financed from national funds (either directly from state budget or from dedicated levies imposed on consumers of energy), investment aid is often financed from external sources, such as the Just

² EEAG Public consultation – Factual summary of contributions, Ref. Ares(2021)3077831 - 07/05/2021, p. 14 ('*If the exemptions for EIUs were to be removed, the vast majority of business representatives think that risk of EIUs relocation would be (very) high. This is roughly the risk level most shared by public authorities*').

Transition Fund, the European Investment and Structural Funds, the Modernisation Fund set up based on the Directive 2003/87/EU or the Recovery and Resilience Facility.

Due to designed arrangements regarding the management of the above funds, in principle they are treated as state resources within the meaning of Article 107(1) of the TFEU and consequently subject of State aid control (also based on the prospective CEEAG). At the same time, disbursement of those funds may be subject of other rules adopted at the EU level governing *inter alia* specific awarding procedures (such procedures are foreseen for the Modernisation Fund³ or for the ESIF⁴). Therefore, the design of the selection criteria may depart from the proposed point 49 of the CEEAG.

In order to exclude doubts or inconsistencies between regimes which govern granting of aid from the above mentioned funds⁵ and CEEAG, the CEEAG should include an explicit indication that if aid is awarded in line with procedures defined at the EU level, such procedures are deemed to be in line with the requirements of the CEEAG, irrespective of whether the non-price selection criteria account for more than 25% of the weighting of all the selection criteria.

Thus, we propose to add additional sentence in point 49 of the CEEAG: *'The aid award procedure is deemed to be competitive if it complies with respective Union rules governing the distribution of specific funds, e.g. the Modernisation Fund and the European Structural and Investment Funds'*.

6. In point 69 of the CEEAG the Commission communicates that it *'will pay particular attention to Article 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council, including the 'do no significant harm' principle, or other comparable methodologies'*.

The EU taxonomy aims to facilitate sustainable finance mechanisms: it helps to gather funding for projects contributing to the final net-zero decarbonisation targets more easily, and ideally in a cost effective manner (for the investors and ultimately for the consumers). However, since the EU Taxonomy is a rather novel concept and gold-standard classification we propose not to introduce overly close link between the State aid rules and the taxonomy regulation. It could be adverse to decarbonization challenges within industry sectors across the EU. Moreover, in our view the EU Taxonomy does not appropriately recognize the role of transition technologies (i.e. natural gas-related activities), in particular in those cases where at this moment there is no clear economically and technically viable alternative.

³ See: Commission Implementing Regulation (EU) 2020/1001 of 9 July 2020 laying down detailed rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards the operation of the Modernisation Fund supporting investments to modernise the energy systems and to improve energy efficiency of certain Member States.

⁴ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy.

⁵ In particular in respect of those categories of aid for which the CEEAG require that support should be granted in competitive bidding procedures, e.g. *'aid for the reduction and removal of greenhouse gas emissions, including through support for renewable energy'*.

In view of the above, we propose that the first sentence in point 69 of the CEEAG is given the following wording: *'In that balancing exercise, the Commission will take into consideration Article 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council, including the 'do no significant harm' principle, or other comparable methodologies'*.

7. In point 71 of the CCEAG the Commission explains that *'Measures that directly or indirectly involve support to fossil fuels, in particular the most polluting fossil fuels, are unlikely to create positive environmental effects and often have important negative effects because they can increase the negative environmental externalities in the market. The same applies for measures involving new investments in natural gas, unless it is demonstrated that there is no lock-in effect'*. This approach is replicated in a number of sections across the CEEAG (for instance in points 108-110 in relation to 'aid for the reduction and removal of greenhouse gas emissions, including through support for renewable energy').

The industry is aware that climate neutrality is the ultimate objective to be achieved by the EU by 2050. At the same time, support of the use of natural gas (as enabler of new gases – biogas and biomethane) or different types of hydrogen (not necessarily green hydrogen) should not be made conditional upon commitment to definitely phase-out those fuels by a pre-defined date or to entirely remove any CO₂ emission of particular facility. For today, technologies offering steerable generation of renewable energy (other than biomass) at commercial scale are not widely available, however deployment of demonstration installations is observed. Nonetheless, we consider it overly strict to require today to replace proven technologies with essentially unknown solutions.

We thus propose that the Commission is not overly restrictive in its assessment of investments relying on natural gas or non-renewable hydrogen. In particular, we consider that the last two sentences in point 110 of the CEEAG should be deleted.

3 Selected categories of aid

3.1 Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy (section 4.1 of the CEEAG)

8. We note that the Commission encourages Member States to put in place State aid measures which are open to all technologies and projects that are in competition and can contribute to the reduction and removal of greenhouse gas emissions. While in theory this may appear an attractive concept, in practical terms aid measures often aim to achieve different objectives simultaneously. In other words, those objectives include, but are not limited to the reduction and removal of GHG, depending on policies pursued by relevant national authorities. For instance, while an aid measure may target the reduction and removal of GHG, it may also support implementation of national industrial policy.

In addition, implementation of measures which are open to all technologies and projects is difficult from an administrative perspective as such measures may support activities which are within competence of different administrative bodies.

Based on the above, we propose that point 83 (a) is given the following wording: *'measure targets a specific sectoral or technology based target established in Union or national law, such as a renewable energy or energy efficiency scheme'*.

9. The idea to require Member States to consult publicly on measures to be notified under section 4.1 of the CEEAG (or any other section of the guidelines) is a positive development, which contributes to transparency, limits potential distortions of competition and allows to avoid litigation before the EU courts. To avoid unnecessary administrative burden and prolonged procedures, we consider that the obligation to consult could be easily associated with the broader public consultation of legislative proposals carried out by the relevant authorities, provided that interested parties are given sufficient time to respond (as required by the CEEAG).

Consequently, we propose to supplement point 88 of the CEEAG with the following sentence: *'In cases where a new aid scheme is put in place or an existing aid scheme is amended and adoption of new legislation is required, public consultation related to the proposed legislation which is open for a period specified in point 85 of the CEEAG and which covers elements listed therein, is deemed to satisfy the obligation of public consultation referred to in the present section'*⁶.

10. Based on the *'Explanatory note accompanying the proposal for the revision of the Guidelines on State aid for environmental protection and energy 2014-2020'* it is our understanding that the subsidy per tonne of CO₂ equivalent emissions avoided referred to in point 98 of the CEEAG does not constitute the obligatory award criterion.

On the other hand, this information must be developed for monitoring purposes. In this respect, it needs to be clarified which calculation/methodology for CO₂ equivalent emissions should be applied. Such methodology should be common for the entire EU to allow for a genuine comparison between Member States.

3.2 Aid in the form of reductions from electricity levies for energy-intensive users (section 4.11 of the CEEAG)

11. We appreciate the codification of the Commission's decision making practice consisting in the *de facto* application of conditions from section 3.7.2 of the EEAG to broader scope of reductions from levies on electricity consumption which finance an energy policy objective (in particular, levies financing support to combined heat and power).
12. As regards sectorial scope of eligible beneficiaries, in point 351 of the CEEAG the Commission explains that: *'For certain economic sectors which are particularly exposed to international trade and rely heavily on electricity for their value creation, the obligation to pay the full amount of such levies can create a significant additional burden. This burden can heighten a risk of activities in these sectors moving outside the European Union to locations where environmental disciplines are absent or less ambitious. In addition, such levies increase the*

⁶ The same arrangements could be inserted to point 309 of the CEEAG.

*cost of electricity compared to the cost of direct emissions and can therefore discourage the electrification of production processes, which is central to the successful decarbonisation of the Union economy. To mitigate those risks, Member States can grant reductions from such levies for companies active in the economic sectors concerned*⁷. It would thus appear that the gravity of the issue of high energy prices for the EIUs is recognized by the Commission.

13. On the other hand however, in comparison to the present EEAG the Commission introduces a number of arrangements which are overly strict.
14. In point 356 of the CEEAG the Commission contemplates introduction of an arrangement that Member States may grant reduction to levies under section 4.11 *'only where the overall cumulative level of these levies (before any reductions) is at least [...] EUR/MWh'*. This proposal has a number of shortcomings and should be abandoned in its entirety (together with point 355 of the CEEAG).

First, whatever the level of the threshold, it will always be arbitrary in nature as there is no single, actual factor across the EU. Hence any set threshold would not be settled within the realities.

Second, when it comes to the costs of support schemes, Member States pursue different policies. Some Member States decide to finance the schemes directly from the general budget, whereas others put in place schemes which are financed through levies on electricity consumption. Some Member States have in place aid measures consisting in social tariffs or subsidies to energy prices in isolated regions, whereas others (like Poland) do not rely on such measures. The proposed point 356 of the CEEAG would materially impact policy choices of the Member States which in our view should be avoided.

Third, the costs of support schemes vary over time. Thus, eligible undertakings would benefit from the reductions (or not) depending on developments which are random from the perspective of their business.

Fourth, higher costs of support schemes do not necessarily amount to higher environmental ambitions of respective Member States. They may constitute an effect of higher costs of supported technologies or from other policy choices.

We note that our doubts appear to be supported by other stakeholders who participated in the public consultation regarding the EEAG: *'A possible introduction of a minimum level of decarbonisation levy to grant EIUs reductions faces strong opposition by business (80%), Member States (100%) and civil society (50%)'*⁷.

15. As regards eligibility of undertakings to benefit from the reductions, under the EEAG the Commission considers that aid should be limited to sectors that are at a significant competitive disadvantage and risk of relocation outside the Union because of the eligible levies.

⁷ EEAG Public consultation – Factual summary of contributions, Ref. Ares(2021)3077831 - 07/05/2021, p. 16.

Under the EEAG and solely in respect of the RES funding, the Commission considered that such risks existed *'for sectors that are facing a trade intensity of 10 % at EU level when the sector electro-intensity reaches 10 % at EU level. In addition, a similar risk exists in sectors that face a lower trade exposure but at least 4 % and have a much higher electro-intensity of at least 20 % or that are economically similar (e.g. on account of substitutability). Equally, sectors having a slightly lower electro-intensity but at least 7 % and facing very high trade exposure of at least 80 % would face the same risk'*.

In point 357 of the CEEAG the Commission proposes that aid can only be granted if the undertaking belongs to a sector facing a trade intensity of at least 20 % at Union level and an electro-intensity of at least 10 % at Union level. In addition, the Commission considers that a similar risk exists in sectors that face an electro-intensity of at least 7% and face a trade intensity of at least 80%. We understand that the Commission may be willing to align the CEEAG with rules governing the EU ETS (in respect of both free allowances for direct emission and indirect emission cost compensation), however from the legal perspective the Commission is not obliged to do so. The thresholds should broadly cover the exposure to carbon leakage. Consequently, we propose that the trade intensity threshold is set at [10%] and the list of eligible sectors in Annex I to the CEEAG is adjusted accordingly.

16. In point 359 of the CEEAG the Commission proposes to increase the minimum level of participation in the costs generated by the electricity levies from 15 % to 25 %. We consider that in order to ensure consistent approach across the CEEAG, the minimum level of own contribution should be aligned with the rules governing 'Aid in the form of reductions in taxes or parafiscal levies' where the reduction level has been set at 80 %.
17. As regards conditionality of the reductions (subsection 4.11.3.4. 'Energy Audits and Management Systems'), we support the requirement set out in point 364 of the CEEAG.

On the other hand, in respect of specific conditions imposed on large undertakings, we note that the Commission takes similar approach to the one envisaged in the revised Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 ('**the EU ETS Guidelines**') published September last year. Since the impact of the modernized EU ETS Guidelines has not been verified in practice, we submit that the CEEAG should not follow the same, in our view unnecessarily strict, path.

Introduction of the proposed conditions will mean that undertakings which have already invested in energy efficiency would be penalized. Moreover, it should be noted that different sectors have different technologies available to decarbonise, so an automatic mechanism is not appropriate. Most importantly, the EIUs are already seeking to become energy efficient anyway since high energy costs diminish their competitiveness.

18. Finally, considering very general wording of point 366 of the CEEAG, we suggest to delete it from the guidelines as it merely repeats two main compatibility conditions set out in Article 107 (3) (c) of the TFEU, rendering the assessment of the Commission entirely arbitrary.

4 Applicability (section 7 of the CEEAG)

19. As regards appropriate measures proposed by the Commission in point 414 of the CEEAG, we consider that in respect to operating aid schemes for RES and cogeneration and measures aimed at increasing the security of electricity supply the Commission should maintain the approach taken under the current EEAG, i.e. existing aid schemes within the meaning of Article 1(b) of Council Regulation (EU) No 2015/1589 concerning operating aid in support of energy from renewable sources and cogeneration only need to be adapted to the CEEAG when Member States prolong their existing schemes, have to re-notify them after expiry of the 10 years-period or after expiry of the validity of the Commission decision or change them (within the meaning of Article 1(c) of Council Regulation (EU) No 2015/1589). The same approach should be applied in respect of schemes consisting in the reductions from electricity levies for energy-intensive users.

Thus, we propose to supplement letter a) in point 414 of the CEEAG with the following sentence: *'Where necessary, existing aid schemes within the meaning of Article 1(b) of Council Regulation (EU) No 2015/1589 concerning operating aid in support of energy from renewable sources and cogeneration, aid for the security of electricity supply and aid in the form of reductions from electricity levies for energy-intensive users only need to be adapted to these Guidelines when Member States prolong their existing schemes, have to re-notify them after expiry of the 10 years-period or after expiry of the validity of the Commission decision or change them'*.

Adoption of the above arrangement will reduce administrative burden and uncertainty regarding the extent of necessary changes.

5 Conclusions

20. The COVID-19 pandemic clearly evidenced that the EU cannot afford not to exploit the potential of its industry. In particular, it confirmed the importance of maintaining supply chains in Europe, not only for economic, but most importantly, for public security reasons.
21. It has become clear that in the fourth EU ETS trading period the EU industry will have to face considerably higher EUA prices. Nonetheless, conditions for the free allocation of allowances have been tightened. The same holds true for indirect emission cost compensation.
- Under currently endorsed reduction targets, even the best performing installations will face massive carbon costs, compromising their global competitiveness. We thus call the Commission to take a broader perspective and consider the competitiveness of the European industry in the global, not only European dimension.
22. So far, the EU industry has been provided with still unclear perspectives of introduction of the Carbon Border Adjustment Mechanism or mechanism addressing foreign subsidies.
23. Against this background, and in view of the higher European Green Deal ambition, the CEEAG rules should 1) define European industrial competitiveness as an objective of common

interest and 2) protect the competitiveness of EIs by alleviating regulatory costs that are not borne by competing industries worldwide. Thus, we encourage the Commission not to take overly restrictive approach, in particular in respect of the conditions of granting aid in the form of reductions from electricity levies for energy-intensive users. Only by following this agenda will the EU be able to prevent carbon leakage.

Sincerely,



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