

## VIK-Position paper on the EU Commission's proposal for the Climate, Energy and Environmental Aid Guidelines 2022 (CEEAG)

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The German Association of Industrial Energy Consumers (VIK - Verband der Industriellen Energie- und Kraftwirtschaft e. V.) welcomes the opportunity to participate in the public consultation on the EU Commission's proposal for the Climate, Energy and Environmental Aid Guidelines 2022 (CEEAG) and supports the Commission's intention to align the State Aid Guidelines for Environmental Protection and Energy 2014-2020 (EEAG) with the objectives of the European Green Deal and the EU Industrial Strategy.

The CEEAG are a key instrument in the industrial transformation towards a climate neutral economy. The revision of the EEAG must support the right framework for European Energy Intensive Industries (EIIs) to contribute to the transition, while remaining competitive on a global scale.

However, the transition to a climate-neutral economy entails challenges. For industrial energy users, these challenges relate to the availability and access to climate-neutral energy at globally competitive prices. Secondly, the transition will require enormous investments to develop, upscale and implement new or existing decarbonisation technologies, both in new and existing plants. These investment costs cannot be borne solely by the energy intensive industries and must be limited for EIIs, given the high level of global competition EIIs face from competitors operating under less constrained conditions. A well-revised state aid framework is extremely important to provide producers with the much-needed financial support and long-term regulatory certainty.

## Main concerns

Due to the EU climate ambition that is higher than in other regions and will further increase, it is essential to develop a regulatory framework that will provide adequate carbon leakage protection and drive transformation with the following elements in mind.

**European Energy Intensive Industries are enablers of the green and digital transition** envisioned by the EU Green Deal. No transition will be achieved without a strong industrial base in Europe. EIs are solution providers, being at the start of long value chains that provide products, materials and technologies that enable emissions reductions in other sectors of the economy. In the past decades, EIs have strongly contributed to decreasing GHG emissions in the EU.

### Long term certainty

The framework should provide long-term certainty for planning of investments, particularly for green projects. Regulatory certainty is important to de-risk investments and render low-carbon solutions competitive with carbon intensive ones.

Against this background, VIK welcomes the release of the draft CEEAG, but would like to raise a number of concerns:

### List of eligible sectors needs to be expanded

The list of sectors eligible for aid in the form of reduction from electricity levies under Section 4.11 has been significantly reduced, from previously 220 to now only 51 sectors being included and is based on stricter criteria especially for trade intensity. Already today, the list contained in the EEAG is too narrowly defined – therefore, any further curtailment is worsening the situation. VIK is very concerned that such a restricted approach would undermine the sectors' ability to transform and decarbonise.

### Cumulative effect of eligible levies should be lifted

The new guidelines will require Member States to consolidate all reductions that will be granted into a single scheme such that the aid can be assessed based on the combined financial effect. The Commission also plans to set a minimum threshold for this combined financial effect.

Considering that electricity costs vary considerably throughout Europe and the cumulative burden for energy intensive industries is already too high, VIK strongly disagrees with the cumulative consideration of all relevant apportionments in terms of reaching an overall minimum threshold. Points 355 and 356 should therefore be deleted.

## **Compensation should not be subject to conditions of re-investment**

The new guidelines will introduce several conditions attached to any aid received. VIK recommends that compensations for companies should be granted as financial support and not be linked to certain conditions of re-investments as this would lead to, for example liquidity issues, particularly for smaller companies, or inefficient capital allocation, and would ultimately hinder the transformation towards climate neutrality.

## **Proportionality: decrease deductible of 1.5 % of the gross value added (GVA)**

The beneficiaries for aid in the form of reduction from electricity levies under Section 4.11 will have to pay a percentage of the costs generated by the electricity levies, while each Member State may instead limit the additional costs to 1.5 % of the gross value added (GVA) of the enterprise. VIK is concerned that the new deductible of 1.5 % of GVA is excessive and would rather prefer a more holistic approach on total GVA contribution. The existing respective individual reliefs from electricity levies, that have proven necessary in terms of maintaining competitiveness, should be preserved. Moreover, a cap on the total burden of levies arising from various laws is necessary.

## **Value chains need to be taken into account**

Value chains need to be taken into account: in particular sectors like the industrial gases sector, the sector of the manufacture of household and sanitary goods and of toilet requisites as well as site operators, which represent an integrated part of the value chain of processes exposed to international trade, should be eligible as their exclusion would not only increase the risk of relocation of many sectors on the proposed Annex 1 but also inhibit these sectors' continued decarbonisation. Aid in the form of reductions should also be possible for companies and sectors which are especially burdened through a remarkably high energy intensity and site competition in European and especially in international markets which do not face an equivalent burden.

## **Protection of existing environmental protection and energy aid schemes**

It should be clarified in the new guidelines that existing environmental protection and energy aid schemes that were awarded based on the old state aid rules including the EEAG should be protected and not being subject to the CEEAG. Otherwise, fundamental principles of European Union law, namely legitimate expectations and legal certainty, would be clearly infringed.

## **A special focus should be paid to the following questions:**

- A reduction of fossil fuel subsidies needs to be investigated more carefully: it should take into consideration global market competition rules and announced cost-effective implementation of the proposed regulation.

- State aid for the investments and specific tax treatments for natural gas as a bridging technology should not be excluded or underestimated. This fact is highly important for natural gas fired cogeneration plants and other industrial processes with their positive effects for greenhouse gas emissions reduction and security of supply.
- “Do no significant harm” criteria should not be an obligatory condition for approval or non-approval for state aid, as it can cause a regulatory uncertainty for economic activities, especially for those which are not included in the current version of climate taxonomy.
- Interactions between the CEEAG and other rules, e.g. EU-ETS-Directive (EU) 2018/410, Renewable Energy Directive (EU) 2018/2001, Energy Efficiency Directive (EU) 2018/2002 and Energy Taxation Directive 2003/96/EC, etc., must not lead to competitive disadvantages or double taxations.

## Relevant amendments in the CEEAG for German EIs

The following amendments of the proposed CEEAG are especially relevant for the German Energy Intensive Industries:

### Content:

#### **Chapter 3: Compatibility Assessment under Article 107(3), point (c), of the Treaty**

- Transparency (Section 3.2.1.4),
- Taxonomy (Section 3.3),

#### **Chapter 4.1: Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy**

- Granting of aids through competitive bidding process (Sections 4.1.3.5 and 4.8.4.5),
- Hydrogen,
- Carbon Contracts for Difference (point 75),
- Carbon Capture and Storage (CCS) and Carbon Capture and Utilization (CCU),

#### **Chapter 4.7: Aid in the form of reductions in taxes or parafiscal levies**

- State aid and reduction of environmental taxes,

#### **Chapter 4.8 Aid for the security of electricity supply**

- Capacity remuneration mechanisms,

#### **Chapter 4.9: Aid for energy infrastructure**

- Preservation of incentives for grid-stabilising measures,

#### **Chapter 4.11: Aid in the form of reductions from electricity levies for energy-intensive users**

- Cumulative effect of eligible levies should be lifted (points 355-356)/Protection of the special compensation scheme within the meaning of the German Renewable Energy Sources Act (*Erneuerbare-Energien-Gesetz (EEG)*),
- Reduced list of eligible sectors (point 357),
- Value chain,
- Proportionality (points 359, 360),
- Conditionality (points 365),

#### **Chapter 7: Applicability**

- Protection of existing environmental protection and energy aid schemes (points 413, 414).

In this paper, we analyse and discuss these amendments from the view of the VIK membership.

## Chapter 3: Compatibility Assessment under Article 107(3), point (c), of the Treaty

### Transparency (Section 3.2.1.4)

Compared to the EEAG, Section 3.2.1.4 point 56(b) CEEAG lowers the threshold for granted state aid to be published in the Commission's transparency award module or on a comprehensive State aid website from EUR 500,000 to EUR 100,000. This creates potential for reputational damage of companies receiving just small amounts of state aid and is therefore disproportionate. The threshold should stay at the current level of EUR 500,000.

Moreover, the possibility to publish aid amounts in ranges should also exist for individual aid amounts granted on the base of categories other than category 4.7 ("Aid in the form of reductions in taxes or parafiscal levies"). The obligation to publish aid amounts in exact numbers would lead to a disclosure of sensitive market information of the relevant companies and therefore distort competition.

### Taxonomy (Section 3.3)

The Commission's intention to pay particular attention to Article 3 of the Taxonomy Regulation (EU) 2020/852, including the 'do no significant harm' principle should be analysed with considerable caution. As the taxonomy-related legislation, especially complementary delegated regulations are currently still in the development phase, the inclusion of so-called 'do no significant harm' criteria in the future version of CEEAG can cause regulatory uncertainty for economic activities and projects supported by the CEEAG. Thus, the use of taxonomy compatibility as a condition for approval or non-approval for state aid can cause competitive disadvantages, especially for those economic activities which are not yet fully covered by the taxonomy-related delegated regulations. Moreover, the projects which are classified as "enabling and transitional activities" for future substantial contribution to emissions reductions or climate resilience might be disadvantaged as well.

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

### Granting of aids through competitive bidding process (Sections 4.1.3.5 and 4.8.4.5)

Competitive bidding should not be the default mechanism for awarding aid and setting the level of aid. Although a competitive bidding process would lead to efficient allocation and welfare maximisation, it always requires that the offered goods or competing processes are sufficiently

standardised. While this is the case for example for most installations for renewable electricity generation, it is not the case for aids that concern industrial processes or complex or composite commodities. For instance, the cost of reducing emissions weighted by the technical efficiency to achieve this goal itself depends on a multitude of side stipulations. Other forms of aid might be deemed necessary for demonstrators, proof-of-concept projects or early start-up-phases of markets, instruments, and technologies. For all of these, Member States should be allowed to award aids using non-competitive mechanisms that are based on different criteria. The Commission does allow a deviation from the required competitive bidding process in point 92; however, the conditions stipulated there can hardly be met in practice by large industry and are not applicable for the cases mentioned above.

Independently of the exact nature of the aid and the technology or business environment it targets, the guiding principle for awarding aid under Section 4.1.3 should be the size of the contribution to decarbonisation, the technological efficiency, and its cost. All projects that meet the corresponding criteria should be eligible for funding, even if the avoided emissions are not directly attributable to the industrial activity in question (point 100).

The same arguments also apply to Section 4.8.4.5. However, here the key criterion for awarding aid for the security of electricity supply should be which project can make the largest contribution to the security of supply.

## Hydrogen

According to the hydrogen strategies of both the European Union and Germany, hydrogen will play a key role in achieving the goals set out by European Green Deal and Europe's climate targets. Hydrogen can be used across multiple sectors to enable zero or near-zero emissions in different industries and their processes and eventually facilitate creating a circular H<sub>2</sub>-CO<sub>2</sub> economy. Only the cheap and reliable supply of hydrogen both as a commodity and as an energy carrier will drive the transformation of the energy intensive industry to achieve the climate goals.

To this end, the Union and the Member States need to establish the regulatory and economic environment in which a well-functioning market and infrastructure can be quickly and reliably developed. Properly directed state aid will be required for a timely build-up of both market and economy. VIK therefore recommends to clarify that hydrogen production is eligible for state aid. Instruments and measures such as Carbon Contracts for Difference, cross-financing via the already existing gas infrastructure to avoid prohibitively large grid tariffs for the start-up phase with only a limited number of hydrogen consumers, and – most importantly – relieving hydrogen production assets using green electricity from taxes and levies such as the German *EEG-Umlage* are essential to achieve these goals and guarantee profitability of the individual business cases. Only then economic forces can yield quick cost depression and development

of large and competitive markets. In this context, narrow criteria regarding the definition of green electricity usage should be avoided in order to support a large amount of industrial hydrogen generation projects and enable creation and ramp-up of a European hydrogen market. The use of guarantees of origin must be sufficient.

### **Carbon Contracts for Difference (point 103)**

Carbon Contracts for Difference (CCfD) are an economic instrument to incentivize emission reduction for technologies whose CO<sub>2</sub>-avoidance cost are currently or will be for the foreseeable future far above the expected CO<sub>2</sub>-price level but once implemented can provide huge reduction potential in particular in the hard-to-abate sectors. The success of these contracts highly depends on the characteristics of the contracts and the conditions under which they are granted.

VIK would like to emphasize two aspects its membership regards as crucial for the success of such instruments:

- Most of the additional cost incurred by implementing emission reduction measures not profitable at the current market price level is linked to operational cost. Current negotiations with the German Ministry for the Environment also focus on subsidizing OPEX in addition to investment. The Commission's restriction on allowing OPEX-focused aid only in cases where the Member State can prove environmentally friendly operation processes should be lifted as covering operational expenses is the main incentive for seeking state aid.
- Current discussions regarding the explicit design elements of CCfD in Germany focus on bilateral negotiations between government and beneficiary, as the details of the contracts are not standardized enough to be suitable for competitive bidding processes.

### **Carbon Capture and Storage (CCS) and Carbon Capture and Utilization (CCU)**

The draft text mentions state aid for CCU/CCS technologies mostly in the context of investments in energy generation based on natural gas (points 326, 348). In Section 4.4 (point 194) support for CCU is allowed under the framework set-out in Section 4.1. However, especially for the hard-to-abate sectors, where GHG-emission reduction is technologically impossible or at such high cost that the profitability of the whole enterprise would be endangered, CCU/CCS can provide means of reducing emissions by effectively creating CO<sub>2</sub>-sinks behind the actual production process and a major step towards an integrated circular economy with CO<sub>2</sub> being an essential ingredient. VIK recommends to include CCU/CCS technologies more prominently in Section 4.4, thus acknowledging the technology's potential to reduce not the creation of GHGs themselves but GHG-emissions into the atmosphere in the hard-to-abate sectors and thus creating legal and political security for Member States to design and implement instruments for aiding the implementation of such technologies. Against this background, any reduction of GHG emissions

must be eligible for funding even if the captured emissions originate from another third party industrial process or source. The reference in point 194 to the guidelines set out in Section 4.1, in particular point 89, i.e., the requirement of competitive bidding processes, should be reviewed as we have stated above to reflect the characteristics of early-stage technologies whose support can in general not be awarded using standardized products in competitive auctions.

## Chapter 4.7: Aid in the form of reductions in taxes or parafiscal levies

### State aid and reduction of environmental taxes

State aid in the form of appropriate tax reductions and exemptions, especially in the field of environmental protection, can play a positive role for energy-intensive industries (including industrial site operators due to their international site competition), as environmental justified burdens have a significant share in industrial electricity prices and costs for energy products. In general, we support the proposed reduction of taxes and/or parafiscal levies for projects or activities which pursue the environmental protection as their primary objective.

The support for industrial decarbonisation measures in Europe, however, should not exclude a reliable legislative framework including a reduction of burdens to ensure high planning reliability, investment security and competitive capacity for energy-intensive companies. A general idea to phase out and reduce fossil fuel subsidies needs to be investigated more carefully: it should take into consideration global market competition rules and announced cost-effective implementation of the proposed regulation. Especially state aid for investments and specific tax treatments for natural gas as a bridging technology (including natural gas demand in industrial processes, for example in chemical industry, gas power plants, natural gas infrastructure and co-generation projects) on the way to the 2050 climate neutrality targets, should not be excluded or underestimated.

The CEEAG should retain policy coherence among all carbon-related climate policy instruments (including for example EU-ETS-Directive (EU) 2018/410, ETS-state aid Guidelines (2020/C 317/04), Renewable Energy Directive (EU) 2018/2001, Energy Efficiency Directive (EU) 2018/2002 and Energy Taxation Directive 2003/96/EC) and be applied in a harmonized way without possibly interfering regulations. In this context, unification and clarification of climate-related legislation would be welcomed. Additionally, an alignment between the Energy Taxation Directive, the CEEAG and the EU-ETS should not lead to double carbon taxation and competitive disadvantages (in case if the EU-Commission will introduce taxation of energy products based on the energy content and their environmental performance (for example GHG-Emissions)). A proper exemption for energy taxation for sectors covered by the EU-ETS or national ETS should be taken into account. The optional tax exemptions envisaged in the

revised version of Energy Taxation Directive should be considered as approved by default and not be treated in compliance with revised State Aid Rules. The absence of such a regulation will endanger the current tax capping system in Germany. It cannot be prolonged after the expiration of the present regulation, because the needed State aid measures will no longer be provided.

In addition, and to maintain the competitiveness of industrial manufacturers and site operators in Germany, we appeal to a reduction of electricity taxes in accordance with European minimum tax rates which are defined in the Energy Taxation Directive.

## Chapter 4.8: Aid for the security of electricity supply

### Capacity remuneration mechanisms

Chapter 4.8 of the draft guidelines addresses the topic of capacity remuneration mechanisms (CRM) and has been significantly expanded when compared with the EEAG. VIK appreciates that the Commission stipulates capacity remuneration mechanisms as instruments only to overcome severe market failure when there is no effect of the price signal on investments in security of supply (points 284, 329). Requiring Member States to address alternative ways of improving the effectiveness and efficiency of existing markets and limiting additional measures in sizes as much as possible (point 324) is in line with the opinion of VIK's members to strengthen and improve the existing market design before reverting to new markets and instruments and that aid has no negative impact on existing markets (point 317).

In point 314 the Commission lays down additional requirements for capacity remuneration mechanisms in form of decentralised markets such as have already been implemented in France and having been discussed in Germany in 2014/2015. VIK has already stated that if an energy only market mechanism is not enough in order to guarantee security of supply, a decentralised/ variant would be preferred.

We see the stricter treatment of natural gas fire plants critical as already in the context of the EU taxonomy, investment in such plants (in particular used for cogeneration) has been disincentivized. Gas power plants and cogeneration in CHP<sup>1</sup> assets, in particular when they are hydrogen-ready, play an important role as bridging technologies towards a fully renewable generation stack and as firm and weather-independent backup capacities. Thus, these technologies should be allowed to provide capacity for the security of supply if a capacity remuneration mechanism was to be implemented in a Member State.

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<sup>1</sup> Combined Heat and Power.

## Chapter 4.9: Aid for energy infrastructure

### **Preservation of incentives for grid-stabilising measures**

As a precautionary measure, we would like to point out that the CEEAG may not impose any restrictions on the urgently needed incentives for grid-stabilising measures, which include both flexible and firm baseload electricity consumption by end consumers.

## Chapter 4.11: Aid in the form of reductions from electricity levies for energy-intensive users

### **Cumulative effect of eligible levies (points 355-356)/Protection of the special compensation scheme within the meaning of the German Renewable Energy Sources Act (*Erneuerbare-Energien-Gesetz (EEG)*)**

Point 355 requires that Member States, in order to mitigate relocation outside the EU due to high levies, consolidate all reductions that will be granted into a single scheme such that the aid can be assessed based on the combined financial effect. Within point 356 the Commission also plans to set a not yet specified minimum threshold for this combined financial effect.

These regulations as a whole lead, on the one hand, to a double accumulation on different levels with different conditions (one is costs, the other is the sum of all exemptions). It is doubtful whether such regulation is still covered by the legal state aid framework within the TFEU.

Regardless of this, it is highly bureaucratic and the purpose of this regulation is unclear - in particular, the introduction of an overall cumulative level is in stark contradiction to the object of examination of relocation. The overall cumulative level is unsuitable because the sum of reductions in various levies says nothing per se about the actual competitive situation of a company in international competition. It is at best an indication that a Member State has many levies on the electricity price or similar, each of which is a disadvantage in international competition.

Moreover, the introduction of an overall cumulative level is likely to increase the problem rather than solving it. In any case, it is another serious obstacle to the transformational investments that are now needed to achieve the greenhouse gas neutrality in 2050 - this is counterproductive for Germany as an industrial location.

Due to the reasons given, and, considering that electricity costs vary considerably throughout Europe and the cumulative burden for energy intensive industries is already too high, VIK strongly disagrees with the cumulative consideration of all relevant apportionments

in terms of reaching an overall minimum threshold. Points 355 and 356 should therefore be deleted.

### **Reduced list of eligible sectors (point 357)**

In point 357 the Commission limits the right to receive aid under this section to sectors meeting the eligibility criteria listed in Annex I – the list has been reduced from formerly 220 to a mere 51 sectors. In detail it requests 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 %. The concept of trade intensity, calculated from statistical data, does not address potential and site competition: i.e. the fact that there might be no cross-border trade for a certain product yet, but that such international trade may be triggered immediately by the introduction of energy cost-increasing measures on one side of the border, which would lead to the immediate need for Carbon Leakage measures.

Moreover, in point 350 the European Commission acknowledges that, Member States will continue to finance ambitious decarbonisation policies through levies in order to meet the transformation of the Union's economy in line with the Green Deal Communication and it is therefore possible that those levies may increase. The Commission also acknowledges the principal need for relief from such levies in order to prevent relocation of industry outside the Union (Carbon and investment leakage). We therefore call on the European Commission not only to retain the existing sectors in the list of eligible sectors, but also to expand the list to include the relevant sectors of adjacent value chains, e.g. industrial gases, salt works and the intermediate products and auxiliary energy of site operators. This is all the more true since the market ramp-up of low-GHG power-to-gas processes is explicitly desired in the European Green Deal and the European hydrogen strategy. Instead of tightening the criteria for eligibility and thus reducing the number of eligible sectors, VIK advocates both to expand the list and lower the criteria.

### **Value Chain**

Instead of connecting the eligibility for aid on the trade intensity, more elements of the value-chain have to be taken into account. Trade intensity as a KPI<sup>2</sup> for industry classification is only of limited use, as it neither reflects geographic competition nor the complexity of value chains. In particular this applies to sectors which are energy-intensive but, as they produce preliminary or intermediate products only, are not active in wholesale or resale of final products across borders, e.g. producers of industrial gases or industrial site operators who provide auxiliary

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<sup>2</sup> Key Performance Indicator.

energy which is used in the relieved sectors. Preliminary, auxiliary or intermediate products and services are often outsourced to specialised producers that do not necessarily belong to the same sector in order to increase economic and energy efficiency<sup>3</sup> (e.g. by bundling demands of individual customers). Although being energy-intensive, the trade intensity, however, is represented only in the end product but is not reflected at all levels of the integrated value chain. Therefore, the respective sectors are indirectly exposed to international trade and competition; they require a level playing field and thus should also be eligible for aid, in particular, when their business model is targeted at efficiency improvements both economically and energetically. Given their important role in the decarbonisation of industrial processes, exclusion of such sectors would not only increase the risk of relocation of many other sectors on the proposed Annex 1 but also inhibit these sectors' continued decarbonisation.

### **Proportionality (points 359, 360)**

In point 359 “the Commission considers the aid to be proportionate if the beneficiaries pay at least 25 % of the costs generated by the electricity levies which a Member State includes in its scheme” acknowledging that an individual contribution of 25 % of the eligible electricity levies might be beyond the limit of what exposed enterprises can bear. Point 360 opens the possibility for Member States to limit the additional costs resulting from the electricity levies to 1.5 % of the gross value added (GVA) of the concerned beneficiary. This deductible has been increased from 0.5 %, which will lead to a significant cost increase for the energy-intensive industry. This will be on top of extra costs resulting from energy transition support, higher climate ambition and the EU Green Deal and will increase the risk of carbon leakage.

Therefore, on the basis of the reasons given, the existing respective individual reliefs from electricity levies, that have proven necessary in terms of maintaining competitiveness, should be preserved. Moreover, a cap on the total burden of levies arising from various laws is necessary.

### **Conditionality (point 365)**

In addition, point 365 (c) will introduce several conditions attached to any aid received. This includes implementing recommendations of an energy audit with a three-year payback and proportionate costs, consuming at least 30 % of the electricity from carbon-free sources, and

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<sup>3</sup> For example, the use of oxygen in production processes considerably increases efficiency by improving the production capacity of furnaces; this provides both economic and environmental gains. When oxygen is outsourced, efficiency gains are further improved; outsourced production generally has a lower carbon footprint than insourced because larger, more efficient industrial gases plants can offer optimized operation, often serving multiple consumers on networks and providing synergies between different uses. As it is one of the most electro-intensive sectors, any efficiency gain in this part of the process leads to the material reduction of emissions.

investing 50 % of the aid amount to reduce greenhouse gas emissions. This is in line with recent regulatory developments, e.g. in the German Fuel Emissions Trading Act (*Brennstoffemissionshandelsgesetz (BEHG)*), where state aid is granted on the condition of reinvestment into climate projects. As VIK has pointed out repeatedly, this severely limits the effect of the aid on the beneficiaries' total costs.

Compensations are granted as financial support and primarily serve to maintain (international) competitiveness. They thus provide a basis for the transformation to achieve the climate targets of the European Green Deal and should not be linked to conditions on re-investment. Investments in transformation projects must remain an independent decision of the respective company in line with a company's decision on business strategy, liquidity planning and investment portfolio. External requirements on investment decisions that are not in line with a company's strategy will inevitably lead to inefficient capital allocation and thus bear the risk of lasting damage to the economy.

## Chapter 7: Applicability

### **Protection of existing environmental protection and energy aid schemes (points 413, 414)**

Point 413 sentence 2 states that unlawful aid will be assessed in accordance with the rules applicable at the date on which the aid was awarded. On the one hand, this can be interpreted in that way, that existing environmental protection and energy aid schemes, which, according to the new guidelines would be unlawful, will be assessed in accordance with the rules applicable at the date on which the aid was awarded (to our understanding also the EEAG) and thus would be lawful.

However, according to point 414 (a) Member States must amend, where necessary, their existing environmental protection and energy aid schemes in order to bring them into line with the CEEAG no later than 31 December 2023 and according to point 414 (b) should give their explicit unconditional agreement to the amendment proposed by the Commission. This point can be understood in that way, that also existing environmental protection and energy aid schemes will be subject to the CEEAG and hence suddenly being unlawful, although they were established under the former state aid rules based on the EEAG and thus actually being lawful. This interpretation would clearly infringe fundamental principles of European Union law, namely legitimate expectations and legal certainty.

Against this background, we ask the Commission to clarify in the new draft guidelines, that existing environmental protection and energy aid schemes, which were awarded based on

the former state aid rules, including the EEAG, should be protected and not being subject to the CEEAG.

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*VIK is the German Association of Industrial Energy Consumers which, as a cross-sectoral organisation, advocates the interests of and advises its member companies on all issues related to energy economy and energy policies. Founded in 1947, VIK represents 80% of the German industrial energy consumers and 90 % of the electricity producers that are independent from utility firms. The products and services of its members are of high significance for value chains, climate protection and the German Energiewende.*