

Draft guidelines on State aid for environmental protection and energy 2022
(CEEAG)
(private sector comments)

1. Ad “Protection of energy intensive industries (EIIs) against undue energy costs” (comment No 1 – supported by relevant ministries)

<p>4.11.2 Scope: Levies from which reductions can be granted</p> <p>354. Under this Section, Member States may grant reductions from levies on electricity consumption which finance an energy policy objective. This includes levies financing support to renewable sources or to combined heat and power and levies financing social tariffs or energy prices in isolated regions. This Section does not cover levies which reflect part of the cost of providing electricity to the beneficiaries in question. For example, exemptions from network charges or from charges financing capacity mechanisms are not covered by this Section. Levies on the consumption of other forms of energy, in particular natural gas, are also not covered by this Section.</p>	<p>4.11.2 Scope: Levies from which reductions can be granted</p> <p>354. Under this Section, Member States may grant reductions from levies on electricity consumption which finance an energy policy objective. This includes levies financing support to renewable sources or to combined heat and power and levies financing social tariffs or energy prices in isolated regions. This Section does not cover levies which reflect part of the cost of providing electricity to the beneficiaries in question. For example, exemptions from network charges or from charges financing capacity mechanisms are not covered by this Section. Levies on the consumption of other forms of energy, in particular natural gas, are also not covered by this Section. Above principles shall apply analogously to environmental charges financing the support of highly-efficient cogeneration, capacity mechanism and other charges which directly fund the implementation of the climate objectives set out in the European Green Deal.</p>
<p style="text-align: center;">Justification</p> <p>Under the existing EEAG (section 3.7), Energy Intensive Users (EIUs) exposed to international competition are entitled to aid in the form of reductions in or exemptions from environmental taxes and in the form of reductions in funding support for electricity from renewable sources. Without such reductions and exemptions EIUs would be placed at such a competitive disadvantage that it would not be feasible to introduce the support for renewables at all. Such reductions and exemptions need not only to be maintained, but must be strengthened.</p> <p>This becomes increasingly important in relation to the contribution of EIUs to the overall EU climate change policy targets, while avoiding carbon, investment, jobs leakage to third countries with less environmental ambition. Rising shares of renewables will most likely be accompanied with increased generation adequacy measures in the form of capacity mechanisms. In analogy to the situation with contributions to renewables, financing such costs could easily undermine the competitiveness of EIUs exposed to international competition, such as steel. Furthermore, EIUs offer solutions in these fields as they contribute to the stability of the grid thanks to their specific consumers’ profiles. Hence, they should be also shielded from an undue extent of these and similar</p>	

regulatory costs, taking into account their overall contributions to taxes and levies. We thus call on the Commission to lift the proposed restrictions in the draft CEEAG (paragraph 354).

The new CEEAG should allow for reductions based on a flexible definition of environmental charges. This would avoid long processes for individual notifications and would harmonize rules across member states, leading ultimately to a more effective EU climate change policy. The lack of uniform rules would otherwise hamper legal certainty and affect competition in the EU internal market. The issue of legal certainty becomes particularly important in view of investment planning in relation to the transition to low-carbon production processes.

2. Ad “Exclusion of the industrial gases sector” (comment No 2)

<p>4.11.3.1 Eligibility</p> <p>357. <i>The aid under this Section should be limited to sectors that are at a significant competitive disadvantage and risk of relocation outside the Union because of the eligible levies. The risk of relocation depends on the electro-intensity of the sector in question and its exposure to international trade. Accordingly, 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%. The sectors meeting these eligibility criteria are listed in Annex I.</i></p>	<p>4.11.3.1 Eligibility</p> <p>357. <i>The aid under this Section should be limited to sectors that are at a significant competitive disadvantage and risk of relocation outside the Union because of the eligible levies. The risk of relocation depends on the electro-intensity of the sector in question and its exposure to international trade. Accordingly, 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% or in sectors that face a lower trade exposure but at least 4% and have a much higher electro-intensity of at least 20%. The sectors meeting these eligibility criteria are listed in Annex I.</i></p>
<p style="text-align: center;">Justification</p> <p>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 excludes the industrial gases (NACE code 2011) – e.g. hydrogen and oxygen - from the scope of application of the reductions. These are an integral part of the steel value chain today, and will be even more crucial for the transition to low carbon technologies in the nearest future.</p>	

Comment No 2 is supported by relevant ministries. Or, alternatively, the following wording of point (186) of current Guidelines could be maintained:

In addition, to account for the fact that certain sectors might be heterogeneous in terms of electro-intensity, a Member State can include an undertaking in its national scheme granting reductions from costs resulting from renewable support if the undertaking has an electro-intensity of at least 20 % (85) and belongs to a sector with a trade intensity of at least 4 % at Union level, even if it does not belong to a sector listed in Annex 3 (86). For the calculation of the electro-intensity of the undertaking, use is to be made of standard electricity consumption efficiency benchmarks for the industry where available.

3. Ad “Aid for the reduction and removal of greenhouse gas emissions” (comment No 3 – supported by the relevant ministry)

<p>4.1.3.1 Necessity of the aid</p> <p>78. Points 33, 34, 35 and 36 do not apply to measures for the reduction of greenhouse gas emissions. The Member State must identify the policy measures already in place to reduce greenhouse gas emissions. 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.</p>	<p>4.1.3.1 Necessity of the aid</p> <p>78. Points 33, 34, 35 and 36 do not apply to measures for the reduction of greenhouse gas emissions. The Member State must identify the policy measures already in place to reduce greenhouse gas emissions. However, while the Union’s ETS and related carbon pricing policies and measures, such as the ETS, internalise some of the costs of greenhouse gas emissions, they may not yet fully internalise those costs or fail to do so for sectors most exposed to international competition.</p>
<p style="text-align: center;">Justification</p> <p>It is necessary that state aid rules – for example via Carbon Contracts for Difference - allow the full abatement costs of the new low-carbon processes to be covered. The lack of a global-level playing field compared to third countries needs to be taken into account, in particular where production is not subject to similar CO₂ costs constraint as production in the EU. For materials - such as steel - where the pass-through of unilateral regulatory costs is not possible due to fierce international competition, the aid level necessitates to cover the full abatement costs in the EU, i.e. the “difference” should be calculated between production costs of low carbon technologies and production costs of conventional ones, without discounting the avoided ETS-related costs. This is the only way to ensure that the actual realisation of respective projects will be guaranteed. Compensation limited to the amount of the difference to the CO₂ price in the European emissions trading system would be insufficient since a significant part of the extra costs would not be compensated and a competitive disadvantage compared with competitors from outside Europe would persist.</p>	

4. Ad “Aid for dismantling of CO₂ intensive production sites” (comment No 4 – supported by the relevant ministry)

	<p>4.1.2 Scope and supported activities 75a new</p> <p><i>This section also covers aid for dismantling CO₂ intensive production sites in relation to measures for the reduction or avoidance of emissions resulting from industrial processes</i></p>
<p style="text-align: center;">Justification</p> <p>Conversion to low carbon production processes in the EU will often occur in existing facilities (brownfield). Current state aid rules under the EEAG do not envisage aid for dismantling of CO₂ intensive production, while 100% aid intensity is possible for the remediation of contaminated sites.</p>	

Granting of aid for dismantling CO₂ intensive production sites after transformation to low carbon production should be allowed under the revised state aid rules.

5. Ad “Public Consultation” (comment No 5 – supported by relevant ministries)

<p>4.1.3.4 Public Consultation</p> <p>85. Prior to the notification of aid, other than in duly justified exceptional circumstances, Member States must consult publicly on measures to be notified under this Section. The obligation to consult does not apply in respect of amendments to already approved measures that do not alter their scope or eligibility, and the cases referred to in point 86. To determine whether a measure is justified, bearing in mind the criteria in these guidelines, the following public consultation is required:</p> <p>(a) for measures where the estimated average annual aid to be granted is \geq EUR 150 million per year, a public consultation of at least 8 weeks’ duration, covering:</p> <p>(i) eligibility;</p> <p>(ii) method and estimate of subsidy per tonne of CO₂ equivalent emissions avoided (per reference project);</p> <p>(iii) proposed use and scope of competitive bidding processes and any proposed exceptions;</p> <p>(iv) main parameters for the aid allocation process⁵⁷ including for enabling competition between different types of beneficiary;</p> <p>(v) main assumptions informing the quantification used to demonstrate the incentive effect, necessity and proportionality;</p> <p>(vi) where new investments in natural gas based generation or industrial production may be supported, proposed safeguards to ensure compatibility with the Union’s climate targets (see point 110).</p> <p>(b) for measures where the estimated average annual aid to be granted is $<$ EUR 150 million per year, a public consultation of at least 4 weeks’ duration, covering:</p> <p>(i) eligibility;</p> <p>(ii) proposed use and scope of competitive bidding processes and any proposed exceptions;</p>	<p>Proposed amendment</p> <p>4.1.3.4 Public Consultation</p> <p>85. Prior to the notification of aid, other than in duly justified exceptional circumstances, Member States must consult publicly on measures to be notified under this Section. The obligation to consult does not apply in respect of amendments to already approved measures that do not alter their scope or eligibility, and the cases referred to in point 86. To determine whether a measure is justified, bearing in mind the criteria in these guidelines, the following public consultation is required:</p> <p>(a) for measures where the estimated average annual aid to be granted is \geq EUR 150 million per year, a public consultation of at least 8 weeks’ duration, covering:</p> <p>(i) eligibility;</p> <p>(ii) method and estimate of subsidy per tonne of CO₂ equivalent emissions avoided (per reference project);</p> <p>(iii) proposed use and scope of competitive bidding processes and any proposed exceptions;</p> <p>(iv) main parameters for the aid allocation process⁵⁷ including for enabling competition between different types of beneficiary;</p> <p>(v) main assumptions informing the quantification used to demonstrate the incentive effect, necessity and proportionality;</p> <p>(vi) where new investments in natural gas based generation or industrial production may be supported, proposed safeguards to ensure compatibility with the Union’s climate targets (see point 110).</p> <p>(b) for measures where the estimated average annual aid to be granted is $<$ EUR 150 million per year, a public consultation of at least 4 weeks’ duration, covering:</p> <p>(i) eligibility;</p> <p>(ii) proposed use and scope of competitive bidding processes and any proposed exceptions;</p> <p>(iii) here new investments in natural gas based generation or industrial production may be supported, proposed safeguards to ensure</p>
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<p>(iii) here new investments in natural gas based generation or industrial production may be supported, proposed safeguards to ensure compatibility with the Union's climate targets (see point 110).</p> <p>86. No public consultation is required for measures falling under point 85(b) where competitive bidding processes are used and the measure does not support investments in fossil-fuel based energy generation or industrial production.</p> <p>87. Consultation questionnaires must be published on a public website. Member States must publish a response to the consultation summarising and addressing the input received. This should include explaining how possible negative impacts on competition have been minimised through the scope or eligibility of the proposed measure. Member States must provide a link to their consultation response as part of the notification of aid measures under this Section.</p> <p>86. In exceptional and duly justified cases, the Commission might consider alternative methods of consultation provided that the views of interested parties are taken into account in the (continued) implementation of the aid. In such cases, the consultation might have to be combined with corrective actions to minimise possible distortive effects of the measure.</p>	<p>compatibility with the Union's climate targets (see point 110).</p> <p>86. No public consultation is required for measures falling under point 85(b) where competitive bidding processes are used and the measure does not support investments in fossil-fuel based energy generation or industrial production.</p> <p>87. Consultation questionnaires must be published on a public website. Member States must publish a response to the consultation summarising and addressing the input received. This should include explaining how possible negative impacts on competition have been minimised through the scope or eligibility of the proposed measure. Member States must provide a link to their consultation response as part of the notification of aid measures under this Section.</p> <p>86. In exceptional and duly justified cases, the Commission might consider alternative methods of consultation provided that the views of interested parties are taken into account in the (continued) implementation of the aid. In such cases, the consultation might have to be combined with corrective actions to minimise possible distortive effects of the measure.</p>
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Justification

We are of opinion that the obligation to conduct such public consultations is not only excessive, but could also lead to severe negative consequences and weaken the overall aim of the CEEAG. First, the national strategies and programmes for decarbonisation already include measures, which are subject to public discussions and consultations. The public consultations introduced by the CEEAG would therefore represent a duplicity in this respect and would make the whole process substantially longer and more burdensome without providing an additional benefit. Secondly, since the projects are extremely time consuming and need to be planned very precisely from a time perspective, the whole process needs to be extremely effective. The execution of public consultations is very time consuming and will therefore result in unnecessary time stretches. This can subsequently be very problematic for numerous beneficiaries that would apply for aid. Such time loss may even result in the inability to deliver/build the desired projects on time (especially large GHG emissions reduction projects which are very complex and lengthy by their nature), i.e. until 2030.

With the above in mind, the obligation to perform an (additional) public consultation beforehand may result in discouragement or reluctance on the side of potential beneficiaries to apply for aid. They could presume that they will not be able to finish the projects on time (proceed with preparatory work and implement their decarbonizing projects) due to time constraints posed by the duration of the public consultation. Not finishing a project co-financed by state aid may result into financial losses that may effectively liquidate their business. These potential negative consequences go directly against what the CEEAG stands and aims for. Therefore, we would like to encourage the Commission to reconsider the general obligation of a public consultation and to refrain from including such a general obligation in the new CEEAG.

6. Ad “Proportionality of the aid” (comment No 6)

<p><i>4.1.3.5 Proportionality of the aid measure</i></p> <p>89. Aid for reducing greenhouse gas emissions should in general be granted through a competitive bidding process as described in points 48 and 49.</p>	<p><i>89. Aid for reducing greenhouse gas emissions should in general be granted through a competitive bidding process as described in points 48 and 49. In such cases no limitation of aid intensity shall apply and aid can be granted up to 100% of the eligible costs.</i></p>
<p style="text-align: center;"><i>Justification</i></p> <p>Additionally, in the absence of caps on aid intensities in the section on proportionality of aid for measures directed at GHG emission reduction, We would propose a clarification that aid provided through competitive bidding processes is not limited to a maximum aid intensity.</p>	

Comment No 6 is generally supported by the relevant ministry – clear wording and definition of conditions under this point is necessary.

7. Ad “Measures to ensure project development” (comment No 7)

<p><i>4.1.4 Avoidance of undue negative effects on competition and trade and balancing</i></p> <p>101. To avoid a budget being allocated to projects that are not realised, potentially blocking new market entry, Member States must demonstrate that reasonable measures will be taken to ensure that projects granted aid will actually be developed, for example setting clear deadlines for project delivery, checking project feasibility as part of pre-qualification for receiving aid, requiring collateral to be paid by participants, or monitoring project development and construction.</p>	<p>4.1.4 Avoidance of undue negative effects on competition and trade and balancing</p> <p>101. To avoid a budget being allocated to projects that are not realised, potentially blocking new market entry, Member States must demonstrate that reasonable measures will be taken to ensure that projects granted aid will actually be developed, for example setting clear deadlines for project delivery, checking project feasibility as part of pre-qualification for receiving aid, requiring collateral to be paid by participants, or monitoring project development and construction.</p>
<p style="text-align: center;"><i>Justification</i></p> <p>We are of the opinion that examples of measures to be taken by the Member States to avoid the allocation of budget to projects that will not materialize is a very positive approach. However, we</p>	

believe that 'requiring collateral' as stipulated in point 101 of the draft CEEAG (i) is excessive and (ii) artificially increases the costs of the project (e.g. collateral in form of a bank guarantee). Therefore, we suggest a deletion of this particular example..

Comment No 7 is supported by the relevant ministry. The ministry also proposes alternative measures, e. g. the so-called "stopped investments" if the amount of aid is not reinvested within 5 years from its payment to the beneficiary, or the beneficiary does not start with realization of the project within 2 years from the payment of the aid.