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HT.5371 – Comments from Norway - Public consultation on the revised Climate, Energy and Environmental Aid Guidelines (CEEAG)

The Norwegian Government would like to thank the Commission for the opportunity to provide comments on the revised climate, environmental protection and energy aid guidelines (CEEAG).

Norway believes that the revised draft CEEAG guidelines represent a considerable improvement in order to support the European Green Deal and the green transition. Norway is overall satisfied with the draft guidelines, as we believe that they provide us with the necessary tools to incentivise the changes needed towards a low carbon economy. We refer to the previous contribution from Norway regarding the design of the future guidelines on state aid for environmental protection and energy (Contribution ID: b0728de6-7f70-4906-a97c-4476d172a1fb), which was sent to the Commission on 7th January 2021 together with a supplementing covering letter. Norway updated its position paper on the European Green Deal in April 2021.¹ The positions relating to Norway as a supplier of clean, affordable and secure energy, and on being a partner for the industrial sector for a clean and circular economy (please see the Norwegian position paper, paragraphs 21 to 38), apply also to the current revision of the state aid guidelines.

The Norwegian Government believes, however, that the draft CEEAG should provide even more guidance in certain areas. We would also like to suggest some amendments to the draft text.

On Section 2.4 of the draft CEEAG – Definitions

We would suggest that a definition of “leasing” is provided. This would help us clarify whether the eligible costs would include costs for rental (operating leasing) or CAPEX (financial leasing).

¹ [A-european-green-deal-norwegian-perspectives-and-contributions-20.04.2021.pdf \(regjeringen.no\)](https://www.regjeringen.no/en/dep/nfd/press/2021/04/a-european-green-deal-norwegian-perspectives-and-contributions-20.04.2021.pdf)

Further, we find that a definition of the term “infrastructure” could also be provided along with clarifications on: a) when an infrastructure is dedicated or not, b) how the access to an infrastructure is made in a transparent open and non-discriminatory way and c) how different kinds of infrastructure are supported and how to distinguish between the different kinds of infrastructure, such as energy infrastructure (dedicated and non-dedicated), infrastructure for the refueling/recharging of transport vehicles (dedicated and non-dedicated), infrastructure (dedicated and non-dedicated) for the refueling/recharging of non-transport vehicles / utility equipment and other types of infrastructure (e.g. dedicated infrastructure with smart storage and management systems).

Finally, definitions of “carbon intensive hydrogen”, “renewable hydrogen” and “low-carbon hydrogen” would be very welcome. These definitions should be consistent with the corresponding definitions in the EU hydrogen strategy COM (2020) 301 and upcoming legislative revisions.

Draft CEEAG paragraph 34

We believe that the last part of this definition should be clarified. Further guidance on an example of renewable electricity used for filling storage systems connected behind-the-meter (jointly installed or as an add-on to the renewable installation), as well as an example of electricity produced as a result of storage system would be welcome.

Draft CEEAG paragraph 35

The Norwegian Government believes that the definitions of energy infrastructure, concerning carbon dioxide, section 2.4, paragraph (35) (d) should be amended as follows:

"(d) concerning carbon dioxide:

- (i) pipelines, other than upstream pipeline network, *[insert: ship, rail and trucks]*, used to transport carbon dioxide from more than one source, that is to say, industrial installations (including power plants) that produce carbon dioxide gas from combustion or other chemical reactions involving fossil or non-fossil carbon-containing compounds, for the purpose of permanent geological storage of carbon dioxide pursuant to Article 3 of Directive 2009/31/EC of the European Parliament and of the Council or for the purpose of using carbon dioxide as feedstock or to enhance the yields of biological processes;
- (ii) facilities for liquefaction and *[delete: buffer]* storage of carbon dioxide in view of its further transportation *[insert: and storage]* ;
- (iii) infrastructure within a geological formation used for the permanent geological storage of carbon dioxide pursuant to Article 3 of the Directive 2009/31/EC and associated surface and injection facilities;
- (iv) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems.

Assets listed under points (i), (ii) (iii) and (iv), which are subject to third party access qualify as energy infrastructure."

Draft CEEAG paragraphs 35 (e) and 35 (g)

The Norwegian Government believes that a clarification on whether thermal energy storage infrastructure would be considered energy infrastructure under any of these paragraphs would be useful.

Draft CEEAG paragraphs 38 and 100

We believe that investments for the reduction of **indirect** GHG emissions should fall within the scope of environmental protection and are therefore eligible for support under CEEAG and Section 4.1. This should be clarified.

On the relationship between the state aid guidelines and the taxonomy regulation

In general, the Norwegian Government supports the objectives of the EU Action Plan for Sustainable Finance, including the EU Taxonomy. We believe it is important to have ambitious criteria and universal definitions of what economic activities can be considered environmentally sustainable, in order to facilitate financing of activities that will contribute to sustainable growth in line with the EU's goal of net zero greenhouse gas emissions by 2050 and the European Green Deal. Thus, we believe such definitions may be useful in a range of sectors, in addition to the financial sector.

We also wish to comment on the reference in the draft guidelines to the taxonomy framework (Regulation 2020/852/EU). We wish to reiterate that the rules on state aid should be revised in accordance with their objective. This is from a public perspective a different objective compared to the objective of the taxonomy framework. Although both aim at contributing to the overarching goals of the "European Green Deal", the state aid rules are directed towards governmental processes and decisions, and the taxonomy framework applies to financial market participants and certain enterprises. This point of departure may also be supported by the principle in the EU Treaty on the Member States' right to determine the conditions for exploiting their energy resources, their choice between different energy sources and the general structure of their energy supply.² This requires considerations that do not apply to the private sector. The framework of the CEEAG must be adopted and interpreted in a way that ensures consistency with the overall legislative framework on environment and energy in the EEA.

However, the considerations regarding a decision on state aid should be based on the state aid framework, which may take into account whether an activity is considered to be in compliance with the taxonomy framework. A decision on state aid could take into account the taxonomy criteria, but the criteria should not be a decisive factor in state aid considerations.

² [Treaty on the functioning of the European Union article 194 \(2\).](#)

The positive environmental benefits of state aid could therefore be partly based on economic activity fulfilling the requirements under the taxonomy framework. Like the common European targets form a background for the assessment of whether aid is used to achieve an objective of common interest, the EU Taxonomy could also be taken into consideration. This should nevertheless only be one of several elements or grounds for considering the positive environmental benefits of state aid.

On Section 3.3 and Section 4.1.4 of the draft CEEAG - Weighing the positive effects of the aid against the negative effects on competition and trade

We propose that the draft text is amended as follows:

Section 4.1.4 Avoidance of undue negative effects on competition and trade and balancing paragraph, (113):

"113. Provided that all other compatibility conditions are met, the Commission will typically find the balance for decarbonisation measures to be positive (that is to say, distortions to the internal market are outweighed by positive effects) in the light of their contribution to climate change mitigation, which is defined as an environmental objective in Regulation (EU) 2020/852 *[insert: and under the European Green Deal]*, as long as there are no obvious indications of non-compliance with the do no significant harm principle."

On eligible costs

Guidance on what the eligible costs are under Section 4.1 would be very welcome. For instance, would it be CAPEX (only), CAPEX and OPEX or the total costs of the investments? In the same Section, we noticed that there are no predetermined maximum aid intensities. Does this mean that in the absence of a competitive bidding process, a funding gap analysis would be considered adequate for the determination of the aid amount?

On the requirements of public consultation and competitive bidding process

It appears that the introduction of public consultations and competitive bidding processes are the rule in the revised CEEAG and a prerequisite when designing aid measures. These requirements raise some concerns however as to how appropriate and necessary they are especially in regards with the support for technology development and one-of-a-kind projects. We therefore recommend that several alternatives to the rule of public consultation and competitive bidding were introduced that would offer flexibility and legal certainty to the state aid grantors.

On Section 4.1 of the draft CEEAG – Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy

To make clear that CO₂ transport is included in paragraph 74 and to ensure consistent use of terms, we suggest to change the wording so that the exact definitions of CCS and CCU are used:

Draft CEEAG paragraph 74

This Section lays down the compatibility rules for aid measures primarily aimed at reducing greenhouse gas emissions, including aid for the production of renewable and low carbon energy, aid for energy efficiency including high-efficiency cogeneration, aid for carbon capture ~~[delete comma insert "and"]~~ storage and ~~[insert "carbon capture and"]~~ use, and aid for the reduction or avoidance of emissions resulting from industrial processes. It also covers support for the removal of greenhouse gases from the environment. This Section does not apply to measures whose primary objective is not the reduction or removal of greenhouse gas emission. Where a measure contributes to both the reduction of greenhouse gas emissions and the prevention or reduction of pollution other than from greenhouse gas emissions, the compatibility of the measure will be assessed on the basis of this Section or Section 4.5, depending on which of the two objectives is predominant.

On Infrastructure

The Norwegian Government suggests that further clarifications are made regarding the following paragraphs:

Draft CEEAG paragraph 75

Are dedicated infrastructure projects meant to be supported according to this paragraph, and could dedicated electricity storage solutions qualify as such projects?

Is dedicated infrastructure for the recharging and refueling of clean/zero emissions vehicles, that are both transport and non-transport related, eligible for support under Section 4.1? Please note that by the term “non-transport related” we mean utility vehicles and equipment such as excavators, forklifts etc.

Draft CEEAG paragraphs 169 and 170

How is the infrastructure described in paragraph 170 different from the infrastructure described in paragraph 75?

Is dedicated infrastructure for refueling and recharging of zero-emission and clean transport vehicles eligible for support under Section 4.3? In addition, does only infrastructure, that is either publicly available or open for all interested users, fall under the scope of 4.3.2?

On non-transport related vehicles and equipment

Further guidance on whether investments (including acquisition and leasing) in non-transport related vehicles, such as utility vehicles (for example forklifts, cranes, excavators and other utility vehicles), are eligible for support under Section 4.1. would be useful.

On Section 4.4 of the draft CEEAG - Aid for resource efficiency and for supporting the transition towards a circular economy

Draft CEEAG paragraph 192

Even though the scope of this paragraph and Section appears to be broad enough, we find that investments at the design and production phase in the raw materials value chain could also be eligible for support. In a circular economy it is as important to incentivize undertakings to design and produce robust and durable/easier to reuse or recycle by design products/materials, as it is to give incentives to undertakings to recycle. We also refer to our comment under 1. Section 2.1. Scope of application.

We would recommend that the scope of this Section also includes the possibility to support new business models, for example Products as a Service (PaaS) that allow for products to be offered as a service, with state aid incentivising either the service provider or the interested user.

Draft CEEAG paragraph 192 (c)

A confirmation that the scope of this paragraph includes investments for the preparing for reuse, preparing for recycling and recycling of other products, materials or substances **that do not necessarily qualify as waste** (definition in paragraph 79) would be useful.

Draft CEEAG paragraphs 204, 192 and 66

In addition, further clarifications regarding these paragraphs appears to be needed. For example, would investments for the preparing of reuse/repurposing of waste/other products, materials or substances be eligible for support under Section 4.4, if the waste/other products, materials or substances will be used again **but not for the same purpose for which they were conceived**? Does paragraph 204 forbid aid for the promotion of business models that are compatible with a circular economy model, if they would turn out to be profitable investments when granted state aid? A typical example here would be the business model where a company invests in used electric vehicle batteries of third parties and repurposes them by leasing them out as energy system storage solutions to interested users. This is a solution that, in our opinion, is compatible with a circular economy model, but it does not seem to be eligible for support under Section 4.4. Another example would be a business model that reprocesses wastewater and uses it for the production of hydrogen via electrolysis.

On the eco-innovation bonus

We would welcome further guidance on the application of the eco-innovation bonus. It currently appears that it can only be provided for resource efficiency investments and not for other innovative investments, for example in the field of reduction of GHG emissions.

On the cumulation of aid with the ETS Innovation Fund

In paragraph 55 (3.2.1.3.1 Cumulation), it is stated that:

“Centrally managed Union funding that is not directly or indirectly under the control of the Member State, does not constitute State aid. Where such Union funding is combined with State aid, it has to be ensured that the total amount of public funding granted in relation to the same eligible costs does not lead to overcompensation.”

In the case of the ETS Innovation Fund, "the same eligible costs" are not necessarily readily identifiable. The ETS Innovation Fund uses an entirely different methodology for calculation of the eligible costs, and can include both CAPEX and OPEX. Guidance on the assessment on cumulation based on differing methodologies, and in particular on the cumulation of aid with the ETS Innovation Fund, would be welcome. Note that this comment also extends to the CEEAG and environmental aid provided under GBER.

On Section 4.6 - Aid for the remediation of contaminated sites, for the rehabilitation of natural habitats and ecosystems and for biodiversity and nature-based solutions

We are pleased to see that the scope of the guidelines has been expanded *inter alia* by including the rehabilitation of natural habitats and ecosystems, protection and restoration of biodiversity, and nature-based solutions for climate change adaptation, cf. Section 4.6 (in addition to remediation of contaminated sites). In our previous submission to the Commission (Contribution ID: b0728de6-7f70-4906-a97c-4476d172a1fb) we also proposed that support for outdoor life should be added. We would appreciate a clarification on this. Is it the Commission's understanding that the category Service of General Economic Interest (SGEI) may cover such a public good as outdoor life, and therefore it is not necessary to include this in the revised CEEAG?

Yours sincerely

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This document is signed electronically and has therefore no handwritten signature