



Ministry of Enterprise and Innovation

HT.5371 Public consultation on the revised Climate, Energy and Environmental Aid Guidelines (CEEAG)

We appreciate the Commission's commitments to address climate and environment challenges and we fully support the overall objectives of the Green Deal, which has triggered a new level of ambition for accelerated decarbonisation of Europe's economy. The state aid guidelines need to facilitate the development of new technologies and materials as well as making sure that existing technologies can continue to be put to good use by Member States to reach the climate goals, in a safe and sustainable manner, without leading to greenwashing and lock-in situations that hinder the transition to a climate neutral economy.

It is evident that the draft revised Guidelines on State aid for environmental protection and energy 2014-2020 (draft CEEAG) has built upon the many strengths of the existing framework and the rules have been amended and developed where necessary, to create a robust but effective state aid regulatory framework, flexible enough to take account of Member States' needs and national objectives but also safeguarding an efficient functioning of the Internal Market. Ultimately, allowing Member States to achieve climate and environmental objectives.

It is important that aid schemes are well-balanced and justified, and that harmful aid schemes are not approved. This is a prerequisite for a well-functioning internal market and ensures that small export-dependent countries are not disadvantaged. However, the requirements must be based on reasonable grounds. If, for example, the requirements on scientific evidence for the effects of the aid are set too high it may have a limiting influence on the design of national legislation. This may in turn,

unintentionally make it more difficult for Member States to carry out effective environmental policies in line with the Green Deal.

In view of the above we have the following comments regarding the draft Climate, Energy and Environmental Aid Guidelines (CEEAG).

A coherent approach

In order to ensure that the State aid framework supports and does not de facto hinder a transition to a fossil-free society in a cost-effective manner it is essential that the state aid framework is coordinated with other parts of EU legislation. This has become even more evident after the presentation of the Fit-for-55-package. In view of the comprehensive and interconnected Fit-for-55-package it is difficult to assess if the draft CEEAG is suitable and efficient. It is therefore key that the CEEAG is continually revised and amended to ensure full coordination with other parts of the EU legislation in view of the coming revisions and amendments due to the Fit-for-55-package.

The State aid framework and its application must not go beyond what is justified based on subsidiarity. Its focus should therefore be to enable the green transition and at the same time safeguard against distorted competition and overcompensation. It must also be flexible enough to take into account the different conditions in different Member States. It must therefore be coherent with the intent and purpose of the relevant sectoral legislation and the EU environmental and energy policy objectives as set out in Articles 191 and 194 of the Treaty on the Functioning of the European Union (TFEU).

Public consultation requirements in 4.1 and 4.8

Many Member States are already conducting public consultations, in accordance with national legislative procedures or traditions, when setting up an aid scheme. There is therefore a risk that the proposed introduction of a requirement to conduct a public consultation prior to and as a prerequisite for the notification of an aid scheme will lead to an increased administrative burden and that the state aid procedures will take longer time. We therefore suggest that a general exemption is introduced, exempting for example Member States that have conducted a public consultation in accordance with national requirements.

In line with this, the wording in point 88 and point 309 should be softened. It should not only be in exceptional cases that an alternative method of consultation should be approved. The CEEAG needs to remain as flexible as possible in this regard.

Competitive bidding process

A competitive bidding process is in many cases a good and efficient way to decide aid amounts. At the same time, it is essential for many reasons to allow alternative methods to calculate aid amounts. The level of uncertainty regarding future costs, residual risks and revenue development can in many cases affect the possibilities for successful completion of procurements. It is therefore welcome that the Commission, in point 53, opens for models that are not entirely based on ex ante calculation, allowing flexibility in the design of the aid schemes.

In line with this, the requirements to conduct a competitive bidding process should be softened in for example section 4.1 and 4.8 in order to allow for the much needed flexibility in the design of state aid schemes.

The definitions in point 18 – comments and proposals

(27) and (74) – Distribution and Transmission system operator

The definitions of *distribution system operator (DSO)* in point 18 (27) and *transmission system operator (TSO)* in point 18 (74) refers only to directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity. In order for the definitions to also include DSO and TSO for gas systems, a reference to the corresponding directive for the gas market needs to be introduced.

(35)(b)(iii) – Energy infrastructure concerning gas

Liquefied biogas (bio-LNG) and compressed biogas (bio-CBG) should be included in the definition of *energy infrastructure* in point 18 (35)(b)(iii) because the same infrastructure is used for both biogas and natural gas.

(35)(b)(c) and (d) – Energy infrastructure concerning gas, hydrogen and carbon dioxide

The definitions in point 18 (35)(b) gas, (c) hydrogen and (d) carbon dioxide have a similar wording. However, according to point 18(35)(d)(iv) the definition covers *any equipment or installation essential for the system in question to*

operate properly, securely and efficiently, including protection, monitoring and control systems regarding carbon dioxide. If the definitions in point 18 (35)(b) and (c) should also cover such equipment or installations it needs to be included in the respective definition.

(63) – Renewable gaseous transport fuels of non-biological origin

To enable state aid for investments in production facilities for electro fuels it is important that the definition in point 18 (63) should also cover liquid fuels of non-biological origin, not only gaseous fuels. Such an amendment would be coherent with the definition in Article 2 (36) in RED II. The definition could be adjusted as follows; ‘*renewable liquid and gaseous transport fuels of non-biological origin*’ means *renewable liquid and gaseous transport fuels of non-biological origin as defined in Article 2, point (36), of Directive (EU) 2018/2001*.

Corresponding adjustments are also necessary in point 162 in section 4.3.1 and 185 in 4.3.2 respectively.

(77) – Union minimum tax level

The definition of *union minimum tax level* does not seem to be used in the draft CEEAG.

Co-financed aid measures

A sentence similar to last sentence in point 31 EEAG should be introduced to point 24 of the draft CEEAG. Aid measures for green transition will be key elements in the Structural Funds work during the program period 2021-2027.

In a similar manner should the last sentence of point 46 EEAG be introduced to point 44 of the draft CEEAG.

Increased aid intensity for small and medium-sized undertakings

A possibility to increase the aid intensity for aid granted to small and medium-sized undertakings is stipulated in point 128 (section 4.2), 158 (section 4.3.1), 182 (section 4.3.2), 211 (section 4.4), 237 (section 4.5) and 398 (section 4.13). The opportunity to increase the aid intensity for aid granted to small and medium-sized undertakings is both important and relevant in relation to the green transition. However, there should be a general provision that each aid scheme should take into account whether the increased aid intensity is justified.

Transparency

The Swedish Government supports efforts to increase the transparency of granted state aid. Reporting individual aid for transparency should however remain primarily an instrument for transparency regarding significant amounts of aid that have a potential effect on competition on the internal market. The benefits of increased transparency requirements need to be proportional to the increased administrative burden upon undertakings and agencies. A reduced threshold for transparency reporting in line with the draft means a manifold increase of the number of beneficiaries to report.

Many of the aid awards involved are tax reductions. The process of collecting transparency data regarding tax reductions – especially information on applicable NUTS region and NACE code – means a significant increase in administration for this type of aid, where i.e. most tax filings would need to include this data. This means an increase in administration not only for the agencies, but also for a significant amount of undertakings. The increased number of intervals, in point 58, in which the required information on individual aid amounts shall be published for schemes in the form of tax or parafiscal aid will also lead to an increased administrative burden.

It is essential that the transparency requirements, as far as possible, are formulated in the same way in the state aid framework so that the reporting can be done in the same way regardless of which legal bases the aid scheme is based on.

In footnote 49 on page 33 of the draft CEEAG it is stated that tax aid that is not paid annually is considered to have been granted on 31 December of the year in which the aid was granted. The possibility to aggregate tax support that is paid monthly in order to reporting the annual sum once a year is very important. In view of how important this approach is, it should instead be explicitly stated in point 59 in section 3.2.1.4 to clarify that annual reporting of such tax aid is sufficient to meet the transparency reporting requirement.

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

Point 77 – The reference to Article 26 RED II

It is essential that the State aid rules are coordinated in a coherent manner with other parts of EU legislation. It is on the basis of sectoral legislation

such as RED II and the stability that it aims to provide that full-scale investments in renewable biofuels are made possible. The investment climate is severely impacted by uncertainty and conflicting signals regarding what is permitted in the internal market. This is particularly the case for sustainable investments, which rely heavily on credibility and goodwill from the market.

It is therefore welcome that the draft CEEAG refers to the sustainability criteria and requirements in the Renewable Energy Directive (RED II) instead of introducing specific criteria for biofuels, bioliquids, biogas and biomass fuels. However, the draft CEEAG introduces a cap in point 77 for aid schemes aimed at biofuels, bioliquids and biomass. It stipulates that support for biofuels, bioliquids, biogas and biomass fuels exceeding the caps defining their eligibility for the calculation of the gross final consumption of energy from renewable sources in the Member State concerned in accordance with Article 26 of RED II, do not produce positive effects which outweigh the negative effects of the measure. The purpose of Article 26 of RED II is to limit the amount of food-based biofuels which Member States can count towards the renewable energy targets in transport but does not ban their use nor the granting of state aid.

While we welcome the fact that the ban on State aid for the production of food-based biofuels has been omitted (point 113 EEAG), we believe that the ceiling introduced in point 77 will be very difficult to apply. It is for example not clear if exceeding the cap means that the aid scheme in its entirety will be automatically deemed illegal state aid or only the share exceeding the cap. However, it is also far from clear if there is a method to remedy a situation where the cap in point 77 has been exceeded. Recovery does not seem entirely natural since the cap is not a part of a proportionality test, it is rather defining the scope of eligible activities. It is also difficult to see how annual monitoring reports and adjusting the conditions in the aid scheme will make a suitable remedy. Further, the cap in point 77 does not seem entirely coherent with the intent and purpose of article 26 RED II and the EU environmental and energy policy objectives as set out in Articles 191 and 194 of the Treaty on the Functioning of the European Union (TFEU). Also, using the cap in article 26 RED II as a condition for eligibility under the state aid rules means that the food-based biofuels that are used within the Swedish supply obligation which do not receive state aid will nevertheless be included in the aggregated volume. This means that volumes that have not received state aid will be added up with the volumes that have

received state aid, in accordance with Article 26 RED II, which in a state aid perspective seems misleading in terms of assessing whether an aid scheme should be eligible or not.

As an alternative, the Commission could consider to exclude state aid to biofuels produced from high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high carbon stock (high ILUC-risk biofuels), as determined by the criteria in Commission Delegated Regulation (EU) 2019/807. If such biofuels are excluded from state aid it would mean no state aid would be contributing to the use of high ILUC-risk biofuels. In contrast, biofuels and bioliquids that are certified as low indirect land-use change-risk biofuels (low ILUC-risk biofuels) in accordance with Regulation 2019/807 should not be excluded. Provided that biofuels are not high-ILUC, they contribute not only to the renewable energy targets set out in RED II, but also to climate goals. Several food and feed crops, for example wheat and rapeseed oil, have an exceptionally low ILUC-risk according to Regulation 2019/807, and should not be disadvantaged.

Conditions and requirements in sectoral legislation that do not allow themselves to be translated so well into the state aid assessment should be avoided. It is not appropriate to introduce State aid rules that complicate and reduce state aid for production of sustainable food-based biofuels and bioliquids, when such fuels which comply with the existing criteria as laid out in RED II, can contribute towards achieving EU or more stringent national climate goals. Therefore, the cap introduced in point 77 referring to Article 26 RED II should not be a limiting factor in the state aid assessment. As mentioned above, the Commission should instead consider introducing a ban on State aid for production of high ILUC-risk biofuels, as determined by the criteria in Regulation (EU) 2019/807. We believe that such a condition would be more coherent with the intent and purpose of article 26 RED II and the EU environmental and energy policy objectives as set out in Articles 191 and 194 of the Treaty on the Functioning of the European Union (TFEU).

Point 77 – Forest biomass

The last sentence in point 77 stipulates that *the Commission will verify whether Member States took into account in the design of their support mechanisms the need to avoid distortions on the raw material markets from biomass support, in particular for*

forest biomass. The state aid framework should take into account the need to avoid, as far as possible, any distortions on any market. If there is a reason to expressly mention the raw material markets and highlighting forest biomass, that reason should be clear from the text, e.g. through reference. The State Aid framework should not introduce further conditions which risks limiting the sustainable raw material resources even further.

Point 82 footnote 53 – Measures opened across borders

According to footnote 53 the Commission will not generally require measures to be opened across borders, although this can help alleviate competition concerns. It is not clear what kind of competition concerns the Commission refers to but it is essential that it remains a Member State decision, how extensive a specific aid scheme shall be in this context.

Point 96 – Aid amounts for fuels which are not subject to a quota or supply obligation

Point 96 in CEEAG states that *when aid is granted in the form of operating aid or a tax reduction to support biofuels, bioliquids or biogas, and there is a quota or supply obligation which effectively sets a separate market price for biofuels, the aid amount must not exceed the difference between their production costs and that market price*. Apart from point 95 we do not seem to find similar provisions regarding proportionality and tax exempted fuels which are not subject to a quota or supply obligation. A definition of the aid amount is necessary also for fuels which are not subject to a quota or supply obligation.

Point 103 – Residual risks

Due to residual risks some projects which are considered for investment cannot be financed by capital markets because the residual risk after up-front grants remains prohibitive, and that operating aid is required. The requirement in point 103 to demonstrate that the aid results in more environmentally friendly decisions should therefore not only point to operating decisions but also investment decisions.

Aid which covers costs mostly linked to operation rather than investment should only be used where the Member State clearly demonstrates that this results in more environmentally friendly operating and investment decisions.

Point 107 – Displace less polluting forms of energy

Point 107 is difficult to analyse because it is vague and nonspecific. It is, however, important that aid schemes do not create incentives to displace less polluting forms of energy. In particular the CEEAG should require a gradual phasing out of non-renewable fuels. However, point 107 should refer to RED II regarding the criteria for renewable fuels. We do not agree that point 107 explicitly mention biomass alongside non-renewable sources. It does not seem to be entirely coherent with the intent and purpose of article 26 RED II and the EU environmental and energy policy objectives as set out in Articles 191 and 194 of the Treaty on the Functioning of the European Union (TFEU).

Bio-Energy with Carbon Capture and Storage (BECCS) and Direct Air Carbon Capture and Storage (DACCS)

Bio-Energy with Carbon Capture and Storage (BECCS) and Direct Air Carbon Capture and Storage (DACCS) should be expressly covered by the same provisions as CCS respectively CCU in section 4.1 and section 4.9 CEEAG.

CCU should clearly contribute to net reduction of CO₂-emissions

Since CCU itself does not lead to permanent negative emissions but through substitution can contribute to reduced carbon dioxide emissions the CEEAG should require that CCU projects in question clearly contribute to net reduction of carbon dioxide emissions.

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

Point 136 (c) stipulates examples of how the advantage can be passed to the final beneficiaries (the building owners or tenants). However, all the examples in the draft concern the building owners. We propose that also examples of how the advantage can be passed to the tenants are introduced. For example, that the advantage to the largest extent possible is passed on to tenants through reduced rents or reduced increases of the rent.

Section 4.3 Aid for clean mobility

4.3.1 Aid for the acquisition and leasing of clean transport vehicles and clean service equipment and for the retrofitting of vehicles

We welcome that the proposal refers to both acquisition and leasing as activities eligible for aid. Leasing is becoming a more common and important way of financing. We would therefore like to propose the introduction of a clear definition covering all different forms of leasing e.g. operational and financial leasing.

We would also like a further clarification on the *net extra costs* in point 152.

According to point 162 and 185, the Commission sees no risks for lock-in effects for investments in CNG and LNG (vehicles and refuelling infrastructure respectively) if there are no other viable options available. The rationale for this is unclear since investments in natural gas inherently will impede investments in renewable fuels. Thus, obligations on the Member States allowing such aid should be heightened when ensuring that no renewable alternatives are available.

In points 162 and 185 we propose a substantially higher minimum level than 20%. In point 185 renewable gaseous transport fuels of non-biological origin (RFNBO) is mentioned alongside biogas, we propose that RFBNO is included in point 162 as well.

We welcome the Commission's ambition to avoid state aid for natural gas investments and leasing but urge the Commission to use a more stringent wording. In 161 "unlikely to" should be replaced by "will not". Similarly, in 162 the Commission assumes that there are instances where no alternatives to natural gas-powered vehicles will be available. In our view such instances are not realistic within the timeframe proposed by the Commission. If so, more effort is needed by the Member State or the Union to find viable alternatives. Therefore, no state aid should be granted to investments and leasing of natural gas-powered vehicles.

4.3.2 Aid for the deployment of recharging or refuelling infrastructure

The geographical conditions of different Member States should be possible to take into account when assessing a state aid measure's compatibility with the Internal Market. In some Member States the geographical conditions

necessitate a longer period of adaptation for the green transition. It affects how much a specific Member State focus on for example electrification of transports. Electrification is a very important part of the green transition, but it is important to reiterate the above-mentioned need for technology neutral state aid rules so that no new or existing technology that can help Member States achieve the ambitious climate goals is set aside.

Regarding electrification of transport, it will require highly innovative technologies and critical raw materials on a massive scale along the entire energy chain to attain our ambitious energy, climate and environmental goals. It does not only require state aid for the promotion of research and development for these technologies to enter the market. Large-scale demonstrations and application will be necessary to test functionality and durability. It is necessary to help make investments in these technologies and processes as attractive as possible. Without intervention it may be difficult to attract private investments due to the high risks and low levels of expected return in a short to medium term. The new section in the CEEAG for the deployment of recharging or refuelling infrastructure is welcome for many reasons. It is also necessary to ensure not only corresponding but also coherent rules in GBER.

According to point 177 eligible costs may include costs for obtaining related permits. It needs to be clarified how that relates to the definition of *start of works* in point 18 (71) and the conditions regarding the incentive effect under section 3.1.2.

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

The State aid rules on aid measures encouraging circular business models should reflect the objectives in the European Circular Economy Action Plan, COM(2020) 98 final. One of the objectives, according to the Action Plan, is to *encourage a shift to ‘safe-by-design chemicals’ through the progressive substitution of hazardous substances to better protect citizens and the environment. However, the safety of secondary raw materials can still be compromised, for instance, where banned substances persist in recycled feedstock* (see 4.2 European Circular Economy Action Plan). In order to enable Member States to support activities which will increase the confidence in using secondary raw materials and thus better reflect the objectives in the European Circular

Economy Action Plan, Sweden propose to introduce the follow to point 192 of CEEAG:

192. [...]

- (a) *Investment for non-toxic material cycles, by substitution of substances of very high concern (SVHC) and harmful substances in products, materials or waste.*

Aid under this Section may not be granted for:

- (a) *Investments in a-d above which do not lead to substitution of SVHC and other harmful substances, where relevant and possible*

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

We welcome the new rules that enable further investments in these areas. However, according to point 226 the aid must be linked to the beneficiary's own activities. We propose to widen the scope so that any activities preventing or reducing pollution are covered, regardless the beneficiaries' other activities.

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

Maintaining the indirect incentive effect

We welcome that the very important concept of *indirect incentive effect* (see point 168 EEAG) is retained in 260-261 CEEAG.

Harmonised environmental taxes

Points 172-175 in the 2014 Guidelines (EEAG) stipulate a simplified proportionality test for harmonised environmental taxes. The draft CEEAG does not contain corresponding conditions. However, the draft CEEAG contains the definitions of *Union minimum tax level* in point 18 (77). A definition which does not seem to be used in the guidelines in its present draft. It would be appreciated if the Commission retains the simplified proportionality test for harmonised environment taxes and that the corresponding provision in GBER, the current Article 44, which is a very important provision is maintained when GBER is amended.

Evaluation requirements

Point 405 stipulates that a draft evaluation plan must comply with the common methodological principles provided by the Commission. Empirical evidence through high-quality research can be difficult to achieve under certain circumstances, e.g. aid in the form of reductions in taxes or parafiscal levies. For example, randomized controlled trials, often called the golden standard of science, would in principle require the introduction of a randomness regarding those who are eligible, in order to be able to compare outcomes for those who have received support with outcomes for those who have not received support. Apart from the fact that this can lead to Member States choosing less effective environmental policies, it is also not legally possible to design tax legislation in this way. Robust and reliable empirical indications can thus in many cases be difficult to achieve, which does not have to be due to the fact that the aid scheme in question has no effect but rather has to do with limited data and other factors making a high-quality scientific evaluation less feasible.

In view of the difficulties to apply the common methodological principles to aid schemes in the form of reductions in taxes or parafiscal levies we propose an exemption from the requirement to comply with the methodological principles for such aid schemes. We also propose that the methodological principles are revised in near future to address for example the specific problems when evaluating environmental tax. For instance, the Commission should consider possibilities to simplifying the counterfactual assessment or prepare alternative methods for the evaluation of tax aid schemes.

Annex 1 and Annex 2 of the 2014 Guidelines (EEAG)

The draft CEEAG does not contain corresponding annexes to Annex 1 and Annex 2 of the 2014 guidelines (EEAG) which have been useful for better overview and understanding of the guidelines. We propose that similar annexes are introduced to the CEEAG.