



Office of Competition and Consumer Protection

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Mr Olivier Guersent,
Director-General,
Directorate-General
for Competition
European Commission

Subject: HT.5371 revision of the Guidelines on State aid for environmental protection and energy

Dear Mr Ryś,

Further to the public consultation on the draft Communication from the Commission - Guidelines on State aid for climate and environmental protection and objectives Energy related to 2022 (hereinafter: Draft Guidelines or CEEAG), I would like to provide the following.

The Polish authorities warmly welcome the Commission's proposed targeted amendments to the CEEAG by proposing provisions on:

- earmarking on green technologies and, in a particular way, on GOZ;
- dedicated to clean mobility;
- energy supply and infrastructure;
- earmarking for energy-intensive industries and heating.

In particular, the Polish authorities appreciate the addition of chapter 4.4. Support for GOZ. By making it possible to earmark aid for:

- a) investments to improve the productivity of raw materials,

- b) waste prevention, preparation for re-use and recycling of waste,
- c) prevention, preparation for re-use and recycling of other products, materials and substances,
- d) investments in separate collection and sorting of waste, materials, products and other substances for preparation for re-use or recycling will make a decisive contribution to improving the waste management system and implementing the circular model in the economy.

In the context of the implementation of the European Green Deal and the work related to the Just Transition Mechanism, the Polish authorities also welcome the addition of chapter 4.12. Aid for closure of coal, peat and oil shale plants.

However, in order for the proposed provisions to be an effective tool for the correct application of the state aid rules, in the opinion of the Polish authorities,

the CEEAG project should be amended, supplemented or clarified,

As set out below and in the annex to the position.

I. General comments on the draft guidelines:

1. According to the Polish authorities, **further simplification of the state aid rules** is necessary. The draft guidelines consulted are unclear - there are numerous references to definitions resulting from separate provisions, which makes it difficult to understand the rules correctly. At the same time, unclear and vague language (e.g. counterfactual scenarios, technologies) exists on a number of important issues.
2. The draft guidelines, in the opinion of the Polish authorities, present **very complex and unattractive support proposals for the recipients**. There is no simple method for determining the amount of support (decarbonisation) and no preference for heating systems that are yet to become energy efficient.
3. In the view of the Polish authorities, the draft guidelines are crucial for the implementation of European funds. This is one of the main areas of State aid delivery. It is therefore important to clearly regulate the issue of state aid for project types planned for the 2021-2027 period, including in particular prosumer investments. It is necessary **to adopt levels of aid intensities that are acceptable to investors and easily identifiable** – e.g. percentage of eligible expenditure and confirmation of interpretation



the non-application of the State aid rules in the case of prosumers whose installation produces energy primarily for its own use and the introduction of surplus energy (including its sale) allows that activity to be regarded as ancillary in the context of point 207 of the Commission Notice on the notion of State aid within the meaning of Article 107. 1 of the Treaty on the Functioning of the European Union¹.

4. The Polish authorities propose to include in the draft guidelines **simplified methods for calculating aid intensities for larger and smaller RES investments**. The indication of significantly lower levels of public aid intensities than in the 2014-2020 financial perspective and the complexity of calculating aid intensities may lead to the abandonment of planned investments in the sector. The disadvantages in the granting of public aid will also affect delays in the implementation of the investment.
5. The Polish authorities would like to point out that **electricity storage facilities** which are not part of the smart grid and are used (by operators) for purposes other than the stabilisation of network operation or use in transport (chapters 4.3 and 4.9 of the CEEAG) do not constitute an area of support under the draft Guidelines. In the view of the Polish authorities, the **draft Guidelines should cover all forms of electricity storage activities**. The electricity storage market will develop largely on the basis of business models involving the use of storage as a peak technology - the CEEAG does not envisage co-financing such projects despite the early stage of development of the market for such services.

(Electricity storage facilities which are not part of a smart grid and are used (by operators) for purposes other than stabilisation of the grid operation or use in transport (chapters 4.3 and 4.9), do not constitute the area of support under EEAG. The guidelines should cover all forms of activity in the field of electricity Storage. The electricity storage market will develop merit based on business models assuming the use of storage as a peaking technology - EEAG do not envisage co-financing of such projects despite the early stage of market development for this type of services.)

6. In the view of the Polish authorities, **the proposed aid intensity may not be sufficient given that the basic aid intensity**



Fixed at 40 % of eligible costs (possible increases: + 10 % for medium-sized, + 20 % for small, in addition to the possibility to add 15 % for areas (a) and 5 % for areas (c), + 10 % for eco-innovation).

7. With regard to the individual purposes of the aid, in the view of the Polish authorities, it is reasonable **to indicate clearly in the draft Guidelines that a given type of aid may be granted in the form of both operating and investment aid**. This provision should be included in particular in Section 4.1 (Aid for the reduction and removal of greenhouse gas emissions including through support for renewable Energy) and Section 4.8 (Aid for the security of electricity supply). Moreover, **purely investment support, especially for gas units**, appears to play an important role in the case of security of supply aid. This may be the only way to finance large gas units that do not meet the definition of high-efficiency cogeneration.
8. With regard to paragraph 112 and point 327 of the CEEAG, it is reasonable, **in the view of the Polish authorities, to waive the condition that the application of the aid measure “does not lead to increased market power” in the case of an incumbent beneficiary**. The provisions relating to the above (points 112 and 327) should read as follows: *“For individual aid measures or schemes benefitting a limited number of beneficiaries or an incumbent beneficiary, Member States should, in addition, demonstrate that the proposed aid measure will not lead to substantial market power.”* The proposed wording is in line with point 66 of the draft Guidelines, which refers to **“substantial market power”** and not to “increased market power”. It seems that the focus should not be on all cases where the market power of the beneficiary of the support increases (in principle, it will almost always increase or continue to grow) but only to those where a previously significant market power is strengthened or maintained.
9. In the view of the Polish authorities, the individual objectives of the aid provided for in the draft Guidelines, for which the aid value is determined by intensity (% of eligible costs), in addition to the bonuses already foreseen (top ups), **should also take into account the bonus for aid supporting investment in regions covered by territorial fair plans**.



transformation. Bonus for JTF regions, according to the Polish authorities, should be an additional 10 percentage points.

10. The alleged and basic way of providing aid under the CEEAG is to be a “competitive bidding process”. In the case of aid for the reduction and removal of greenhouse gas emissions, bids should, as far as possible, be open to all competing technologies for GHG reduction. In practice, this will mean competing with each other, especially as the requirement to define the “per unit amount of greenhouse gas reductions achieved (reduced euro/t CO₂ equivalent)” has been signalled for all types of projects supported. While the Explanatory Note to the draft Guidelines states that ‘this parameter will not be required to be used as a basis for selecting projects for support’, point 49 of the CEEAG states that ‘the selection criteria in the tendering procedure should, in principle, be based on the amount of aid claimed by the applicant, directly or indirectly linked to the contribution to the objective of the measure (for example, in terms of environmental protection unit or energy unit)’. As a result, some technologies may be favoured a priori over others, despite the reservation in the CEEAG text of technological neutrality. In this context, in the view of the Polish authorities, it seems reasonable to have the widest possible derogations from the application of the cost-effectiveness criterion as the predominant criterion. The EC should adopt a more flexible approach with regard to the selection (selection) criteria, taking into account the specificities of the different categories/areas of support listed in point 15 of the draft Guidelines. In view of the above, the Commission should, for example, refrain from setting a maximum percentage limit for the weight of other (‘non-price’) criteria and leave it to the Member States to do so.
11. In addition, it is worth aligning the scope and conditions proposed in CEEAG 22 with the GBER (State aid in the energy sector, rules on State aid for nature and biodiversity), the Commission Notice on the notion of State aid within the meaning of Article 107. 1 of the Treaty on the Functioning of the European Union, the European Union Guidelines for State aid in the agriculture and forestry sectors and in rural areas 2014-2020 (State aid for projects protecting nature and biodiversity).



(moreover, it is worth harmonising the scope and conditions proposed in CEEAG 22 with the GBER (state aid in the energy sector, provisions on state aid targeted at nature and biodiversity purposes), the Commission Notice on the notion of State aid within the meaning of Article 107 paragraph 1 of the Treaty on the Functioning of the European Union, European Union guidelines on State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (state aid to projects for nature and biodiversity purposes).

12. The draft guidelines are intended to replace the existing Guidelines of 1 January 2022. In this context, we would point out that the draft guidelines lack clear information on the period for which the Commission plans to adopt the CEEAG. The name of the document refers to the year 2022, but there is no fixed end date for the document, contrary to the Guidelines currently in force. This may hamper the long-term planning strategies needed for the energy transition. In the view of the Polish authorities, it appears that such a date should coincide with the greenhouse gas emission reduction target set for 2030, thus ensuring adequate regulatory stability.

II. Section 2 - Scope and Definitions 1. Par. 18 (23)

In the view of the Polish authorities, it is reasonable to change the definition of the contaminated site as follows: *“contaminated site” means a site where there is a confirmed presence, caused by human activity, of materials or substances of such a level that they have a significant risk to human health or the environment, taking into account current and approved future use of the land*. In view of the fact that large areas of municipalities are often not covered by local development plans in Poland, it is appropriate to refer to possible uses in the definition, which makes the definition more flexible. This will increase flexibility and facilitate the conversion of numerous brownfield sites.

2. Par. 18 (34)

The Polish authorities would like to point out that in the Polish version of the definition of ‘energy from renewable sources’, ‘storage systems’ were incorrectly translated as ‘storage systems’ in the definition of *‘energy from renewable sources’*.



3. **Par. 18 (35)**

In the **definition of ‘energy infrastructure’** in paragraph 18 (35) of the CEEAG, in the case of hydrogen (point (c)), the sentence *‘The facilities listed in points (i), (ii), (iii) and (iv) which are accessible to third parties qualify as energy infrastructure’* is at the end. If access for third parties is to be a necessary condition, the Polish authorities consider that this should be made more explicit. The same applies to the final sentence in the following paragraph, i.e. carbon dioxide infrastructure (point 18 (35) (d) of the CEEAG).

4. **Par. 18 (35)**

The definition of ‘energy infrastructure’ does not cover electricity storage facilities defined as installations intended for the permanent or temporary storage of electricity. The draft Guidelines provide for the possibility of supporting warehouses only through a ‘strategic reserve’ support scheme and off *the meter storage facilities* or charging stations for electric vehicles. According to the Polish authorities, **the scope of the draft Guidelines should be extended to include the possibility of supporting energy storage facilities for balancing the energy system.** Electricity storage facilities are an important element in ensuring the flexibility of the electricity system and the ability to integrate variable-weather RES. **Electricity storage facilities operating independently in the electricity system should be included in the scope of the draft guidelines.**

5. **Par. 18 (35)**

The Polish authorities would like to propose that the **wording “to two or more countries” be deleted from point 18 (35) (a) (v) of the CEEAG**, which will not exclude offshore energy transmission networks connecting two or more parts of one Member State:

“(v) offshore energy transmission networks, which means any equipment or infrastructure for the transmission or distribution of electricity, as defined in subparagraph (i) above, having a dual function: Interconnections and transmission or distribution of electricity from offshore renewable energy sources from offshore power generation facilities ~~to two or more~~ **more** countries. This shall also include any neighbouring equipment or installations essential for safe, secure and efficient operation, including protective, monitoring and control systems and necessary substations, where they also ensure the interoperability of technologies and, inter alia, the compatibility of interfaces between different technologies;”



(We propose the deletion of the part ‘to two or more countries’ from the point 18 (35) (v) that won't exclude the off-shore electricity grids connecting two or more parts of one MS:

“(v) off-shore electricity grids, which means any equipment or installation of electricity transmission or distribution infrastructure, as defined in point (i) above, which has dual functionality: Interconnection and transmission or distribution of offshore renewable electricity from the offshore generation sites ~~to two or more countries~~. This also includes any offshore adjacent equipment or installation essential to operate Safely, securely and efficiently, including protection, monitoring and control systems, and necessary Substations if they also ensure technology interoperability and inter alia interface compatibility between different technologies.)

6. Par. 18 (36)

We would point out that the definition of ‘energy characteristics’ refers to a separate legal act in which energy consumption should be determined as the result of ‘calculations’ or ‘measurements’. It is inappropriate to leave two alternative methods (estimation or measurement). Allowing hypothetical calculations based on unverifiable parameters leads to unreliable results. For buildings undergoing refurbishment, the only reliable method for determining energy demand is the actual energy consumption over a specific historical period.

7. Par. 18 (37)

The definition of ‘energy savings’ refers to a separate legal act which provides for ‘simultaneously ensuring normalisation of external conditions affecting energy consumption’. In the view of the Polish authorities, the Commission should explain how, in a situation of increasing weather anomalies, the “normalisation of external conditions” is to be ensured. This issue is essential for the examination of the effects of the aid. A definition based on an impracticable condition cannot serve as a basis for calculating the value of the aid or achieving certain effects on the part of the aid beneficiary.

8. Par. 18 (62)

There are doubts about the definition of a “renewable energy source”, according to which renewable energy (i.e. wind, sun, etc.) is considered to be renewable energy. In this context, we would like to point out that renewable energy sources are not the same as renewable energy sources. Renewable energy is energy from



renewable sources, however, are distinct and not equivalent concepts. The definition should therefore be improved and its logical correctness ensured.

9. Par. 18 (71)

The definition defines ‘start of works’ as ‘the first binding commitment which renders the investment irreversible’. This means that construction works which do not yet render the investment irreversible do not necessarily imply the start of the investment. This does not seem to be entirely consistent with the provisions of the GBER, where the start of construction works, the first obligation to procure equipment and the activities making the investment irreversible are independent of each other. In view of the above, the Polish authorities would like to ask you to confirm that the Commission’s intention to define the concept of “start of work” in the draft Guidelines is different from that of the GBER.

10. Par. 18 (71)

As part of the definition of “start of works”, the Polish authorities propose deleting the last sentence of the definition: *‘For take-overs, ‘start of works’ means the moment of acquiring the assets directly linked to the acquired establishment’*. The proposed text to be deleted is not relevant to the projects covered by the different objectives of the CEEAG. Asset takeover projects are one of the so-called ‘initial investment’ models for regional investment aid. In RES practice, shares in SPVs with appropriate land and permits (i.e. with prepared designs) are often acquired, which are not considered as the start of construction works or the acquisition of equipment. According to the current wording of the draft guidelines, the acquisition of assets in the form of shares in such a case would constitute a start of works, even if the project had been prepared by the purchaser of the shares from the outset, the mere acquisition of land and permits would not have been the starting point of the works. In practice, therefore, similar situations would be treated extremely differently, which seems incompatible with the fundamental principles of EU law, i.e. the principles of equality and non-discrimination.

11. Par. 18 (78)

The Polish authorities would point out that, in point 18 (78), the draft guidelines refer to the BAT conclusions which were annulled by the General Court of the European Union in its judgment of 27 January 2021. The effects of the annulled implementing decision were



authorised by the General Court of the European Union to maintain until the entry into force of a new act intended to replace the BAT conclusions,

however, no longer than one year. The time limit set by the General Court of the European Union will expire on 27 January 2022. In the light of the above, the Polish authorities would like to point out that this appeal may be flawed, notwithstanding the fact that the Commission has appealed to the CJEU².

III. Section 3 - Assessment of compliance in the light of Article 107 3(c) TFEU

1. Point 27

With regard to point 27, the Polish authorities would like to explicitly confirm that the criterion of ‘additional net cost (funding gap)’, comparing the aided activity or project to the counterfactual absence of aid, is the main criterion for assessing the incentive effect and proportionality of the aid. More specifically, whether the criterion of “granting aid only until the plant is fully depreciated...”, in recital 129 of the current EEAG, is no longer applicable and therefore aid after depreciation is allowed if all the relevant conditions are fulfilled.

(Taking stock of recital 27 along section 3.2.1.3, is it true that ‘the net extra cost (funding gap)’ criterion, comparing the Aided activity or project to the counterfactual scenario in the absence of aid is the main envisaged criterion of assessing the incentive effect and proportionality of the aid? More specifically, is the criterion of “granting aid only until the plant has been fully depreciated...” from recital 129 of EEAG no longer pursued, therefore allowing for postdepreciation aid to all relevant conditions are met?)

2. Point 36

The Polish authorities point out that the Commission’s assessment of the compatibility of the aid with the internal market should also take into account the different situations in the different Member States, including their different energy mix and decarbonisation rate, forced by historical, social, geographical location, existing infrastructure, etc. It seems unreasonable to assume that where State aid is granted to projects or activities which, in technological terms, the level of risk and size are similar to those already carried out in the EU on market conditions, the Commission assumes that, in principle, aid is not justifiable (paragraph 36). Although it is clear that aid should not be granted in those cases where

market-based solutions ² EC appealed to the CJEU

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=241823&pageIndex=0&doclang=PL&mode=req&dir=&OCC=first&part=1&cid=7938770>

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while making it possible to carry out a given type of investment or project, it must be stated that it is not appropriate to set a benchmark at EU level, since the degree of maturity of the markets varies from one Member State to another. Therefore, **the fact that a type of project is successfully implemented on a purely market basis in a more developed country should not prejudice the impossibility of granting aid for such a project in another EU country with a lower level of development.** This conclusion applies in particular to the energy sector, in the context of increasingly unified market rules, while national power generation sectors continue to differ.

3. Point 54

In the view of the Polish authorities, it is necessary to **indicate a specific mechanism to verify that the total amount of aid for an action or project does not lead to overcompensation or does not exceed the maximum allowed aid amount for the same eligible costs.** In addition, the concept of ‘same eligible costs’ needs to be clarified, i.e. whether it is all expenditure in the project or related to a specific type, category of works/supply in the project.

4. Point 65

The Polish authorities propose to **delete point 65 of the CEEAG.** The identification of possible short- and long-term effects on competition and trade is subject to a significant risk of error and inaccuracy. State aid guidelines should be as transparent and unambiguous as possible in order to avoid misunderstandings and unequal treatment and to ensure a stable investment environment without which a rapid and effective transition is not possible. The overriding criteria for public aid for climate, environmental protection and energy should be to improve the quality of the environment and to contribute to the achievement of the EU’s climate objectives, and investments should be assessed in this respect.

5. Point 69

Point 69 of the draft Guidelines, as part of the so-called ‘balancing test’, which is one of the conditions for the admissibility of aid, emphasises the need to comply with the taxonomy as regards the criteria of ‘sustainability’, including *the ‘do no significant harm’ (DNSH) principle.* This means indirectly that the rules on state aid will also be subject to emission limits and, as a result, national public funds providing preferential support for energy will thus be



they had to comply with the taxonomy. The inclusion of the DNSH principle as a criterion for assessing the admissibility of the proposed aid measure seems, in the view of the Polish authorities, to be unfavourable, in particular that such an appeal is currently blank, as the criteria for assessing the DNSH principle in relation to energy based on natural gas have not been finally established.

6. Point 71

The Polish authorities propose an amendment to point 71 of the CEEAG. Heat is a fundamental asset "without which climate cannot survive in many countries. There is a risk that climate policies may lead to a major paperisation of societies and a significant increase in energy poverty. It is worth considering including in the draft guidelines the possibility that, **for social reasons, the EC would allow support for the net cheapest projects** (at prices paid free of public-law charges).

7. Point 71

In the view of the Polish authorities, **it seems reasonable to refrain from the assumption that aid also covering fossil fuels, including natural gas, is not only not capable of producing positive environmental effects, but often has significant negative effects** (point 71 of the CEEAG). First, any aid measure supporting modernisation or investment projects aimed at reducing emissions must be assessed on a case-by-case basis, without any stated 'presumed' assumptions. Secondly, it should be noted that not all types of aid covered by the CEEAG are environmental protection measures within the meaning of point 18 (38) of the CEEAG. The draft Guidelines also cover types of aid with a different basic objective, as is clear from points 11, 15, 19 or 21(b) of the CEEAG, which distinguish between environmental protection and activities in the energy sector. Paragraph 71 of the CEEAG is worded as if any aid were primarily intended to achieve environmental objectives, which would automatically translate into a negative outcome of the balancing test in terms of competition and trade. In the view of the Polish authorities, **it does not seem reasonable to automatically equate environmental effects with effects on competition and trade.**

Therefore, the Polish authorities propose **to delete point 71 of the CEEAG**. Green fossil fuel technologies can make a significant contribution to improving the quality of the environment both in the short and long term. Abandoning the use of fossil fuels is a gradual process and will take several or several decades.



The lack of use of modern green fossil fuel technologies will continue to cause high levels of pollution of the sector, which will significantly hamper the achievement of the EU's climate target. **The overriding criterion should be the improvement of the quality of the environment and investments should be assessed in this respect.**

8. Point 72

We would point out that **the draft Guidelines do not provide information on the thresholds for notification of the planned aid.** Point 72(b) of the CEEAG merely states that the obligation to notify individually will apply to projects of 'particular size or characteristics' where the competitive bidding process does not apply. It should be noted that the definition of such thresholds should be clear, which the general clause currently proposed (*"projects of a certain size or presenting certain characteristics"*) *does not meet.* *It should be stressed that the notification thresholds should be higher than those laid down in point 20 of the EEAG,* in particular for investment aid - the individual notification should concern projects where investment aid exceeds the ceiling of EUR 50 million and not EUR 15 million, as has been the case so far.

IV. Section 4.1 – Aid for the reduction and removal of greenhouse gas emissions, including through support for energy from renewable sources

1. General comments

The Polish authorities would like to propose introducing in section 4.1 of the CEEAG **the possibility of financing energy storage facilities including a source of high-efficiency cogeneration.**

We would point out that the draft guidelines **do not contain information on the intensity of support for decarbonisation and RES.** It is necessary to introduce in the draft guidelines simplified methods for calculating aid intensities for larger and smaller RES investments.

2. Point 79

The draft EC Guidelines provide that public aid to support renewable energy will be inextricably linked to the reduction of greenhouse gas emissions (as is apparent, for example, from the obligation under point 79 of the CEEAG and subsequently Section 4.1.4 of the CEEAG). Is there any proposed methodology to be used for the programmes to calculate



greenhouse gas emission reduction levels in the overall context of

multi-beneficiary support schemes? For example, recital 98 seems to propose solutions only for individual beneficiaries.

(As the state aid supporting renewable energy is envisaged to be inseparably linked to the reduction of greenhouse gas emission (as per e.g. obligation from recital 79, section 4.1.4), is there any proposed methodology to be applied for the schemes in order to calculate the levels of reduced greenhouse gas emission in the context of general support schemes, open to numerous beneficiaries? E.g. recital 98 seems to be proposing the solutions only in relation to individual beneficiaries.)

3. Point 80

According to paragraph 80 of the CEEAG, “Member States should ensure that the aid remains necessary for the duration of schemes that last for more than one year, by updating annually the analyses of the related costs and revenues, or, in the case of schemes with a lower frequency of aid, before granting the aid, ensure that the aid remains necessary for each eligible category of beneficiaries”. Does this mean that schemes providing for the granting of aid not through a tendering procedure, like the current depreciation schemes for projects with a capacity <1 MW in the form of Feed-in Premium, would no longer be considered compatible with the internal market? Adopting such a solution would transfer the risk to the investor, thus constituting a significant obstacle to more expensive RES technologies (which in turn ensures greater grid stability).

(Recital 80 states “Member States should ensure that aid will be necessary for the duration of schemes that run for more than one year by updating their analysis of relevant costs and revenues annually or for schemes involving less frequent granting, before aid granted, to ensure that aid remains necessary for each eligible category of beneficiary.” Does mean that schemes foreseeing allocation of aid not through the bidding process, similar to currently functioning <1 MW projects depreciation-lasting schemes in the form of Fe-in compatible schemes in the form of Fe-in compatible? IF so, this would shift the risk accommodation towards the investor, and finding a substantial Obstacle for more expensive RES technologies (which in turn provides for greater grid stability).

4. Point 80

The mechanism for the annual adjustment of aid schemes proposed in paragraph 80 of the CEEAG is, in the opinion of the Polish authorities, too strict. Annual verification of the



necessity of the aid is not necessary where longer programmes have been prepared

they shall be based on reliable and sound analysis. Such an update of the programme will also create legal uncertainty for both beneficiaries and Member States. The possibility to remove certain categories of beneficiaries from adopted and published aid schemes will create uncertainty for investors. In addition, Member States will have to implement programmes in a form different from that approved by a decision of the European Commission. It is appropriate to extend the adjustment of the programmes to the market situation and to take into account the approval of these changes by the Commission.

5. Points 82 and 83 (a)

According to paragraphs 82 and 83(a) of the CEEAG, the measure should by default cover all projects operating in the electricity market and *“programmes specifically targeting renewable energy sources should be open to all technologies that meet the definition of “renewable energy sources” and according to recital 83(f) of the CEEAG, “a more selective approach may lead to lower environmental costs (for example by reducing grid integration costs) or less distortions of competition”*. Therefore, are only lower environmental costs envisaged as a criterion for a more selective approach to the granting of aid to individual RES technologies, e.g. through dedicated auction baskets, and does this mean that other factors, such as the pursuit of greater grid stability, cannot be taken into account in the national aid award strategy?

On the other hand, in accordance with point 90 of the CEEAG, the tendering procedure may be limited to one or more specific categories of beneficiaries if evidence is provided (...) that, inter alia, the levels of support expected to be required by different categories of beneficiaries vary significantly; In such a case, separate competitive tendering procedures may be used so that categories of beneficiaries with similar costs compete with each other. It is necessary to clarify the correlation between those provisions in the light of the above-mentioned context (need to differentiate on a basis other than the price itself).

(According to recitals 82 and 83(a), a measure should by default INVOLVE all projects operating in the electricity market and “renewable energy sources-specific schemes should be open to all technologies meet the definition of ‘renewable energy sources’, and in line with recital 83(f) “a more selective approach can be expected to lead to lower costs of achieving environmental protection (for example through reduced grid integration costs), and/or result in less distortion of competition”. Is itio



only the lower costs of achieving environmental protection envisaged as the criterion of more selective approach for allocation of the aid for specific RES technologies, e.g. through dedicated auction baskets? Do it mean that other factors, like trying at ensuring greater grid stability, cannot be taken into account in the national strategy of allocation of the aid?

On the other hand, recital 90 readsthat the bidding process can be limited to one or more specific categories of beneficiary where evidence (...) is provided (...) that: (b) the level of support that different categories of beneficiary are expected to require deviates minor; In that case, separate competitive bidding processes may be used so that categories of beneficiary with similar costs compete against each other. What is the interconnection of the provisions, given the afore-mentioned background (the need for differentiation on the basis other than mere price)?

6. Point 89

It follows from paragraph 89 of the CEEAG that **aid to reduce greenhouse gas emissions must, in principle, be granted through a competitive tendering procedure**. With such a broad objective and, consequently, the many types of investment and technology that may be used, **this requirement appears to be too strict**. Although the following points (90-92) of the draft Guidelines provide for some relaxation of this requirement, the tendering procedure may nevertheless exclude from support investments with additional beneficial environmental effects or less widespread technologies which are difficult to take into account at the stage of designing the aid scheme. The Polish authorities propose to **introduce a limit on the aid intensity as a percentage of the eligible costs**, which would be an alternative method of ensuring the proportionality of the aid.

7. Point 92

The derogation from the obligation to apply the '*competitive bidding process*' in the context of aid for emission reductions (point 92 of the CEEAG) should, in the opinion of the Polish authorities, also apply to cases where the source of the aid is cohesion policy funds (available in the 2021-2027 perspective), distributed under operational programmes and not just 'small projects' or '*insufficient potential supply to ensure effective competition in the tender*'. The procedures for allocating Cohesion Policy funds are predicated on a competitive procedure, but this procedure will not necessarily in any case meet the conditions of *the Competetive bidding process set out* in points 48 to 49 of the draft Guidelines.



In particular, in the case of operational programmes implementing cohesion policy funds, the selection criteria are not focused solely on the price aspect, as required by paragraph 49 of the CEEAG, but often also address a number of other issues.

8. Item 92(a)

The Polish authorities would like to ask you to indicate on the basis of which methodology “insufficient supply to ensure competition” should be estimated.

9. Item 92(b)

The proposed exception to the determination of the allowable support by means of the complex analyses described in points 50 to 51 applies, inter alia, to RES installations with an installed capacity of less than 400 kW (including those in operation since 2026 - less than 200 kW). Therefore, in the opinion of the Polish authorities, it is necessary to introduce in the draft guidelines simplified methods for calculating aid intensities for the above-mentioned and larger RES investments.

Furthermore, in view of the threshold of 400 kW indicated in point 92(b), a balance should be made of the thresholds already introduced in the related legal bases, e.g. in the GBER, which is to be phased out only at the end of 2023, the assumed reference threshold for a “small project” is 500 kW (e.g. Article 42 para. 9 and Article 43. 2). Therefore, the proposed threshold should be assimilated to the GBER in order not to introduce unnecessary divergences. In fact, such an adjustment seems more appropriate than that proposed in the draft guidelines taken from Article 5. Article 2(b) of Regulation^{2019/9433}, since the latter concerns only the threshold for the derogation from balancing responsibility.

10. Point 94

The Polish authorities would like to clarify whether there are any specific requirements applicable to competing certificates or supplier obligation schemes introduced in point 94 of the CEEAG. As regards its relationship with any other potential systems, are they alternative, independent or complementary?

The Polish authorities asked for clarification whether there are any specific requirements applicable in relation to the competitive certificates or supplier obligations introduced in recital 94? Concerning its relation to any other potential schemes, are they alternative, independent from or supplementary to any other?)

³ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity Journal OJ L 158, 14.06.2019, p. 54).



11. Point 109

Green fossil fuel technologies can make a significant contribution to improving the quality of the environment both in the short and long term. Abandoning the use of fossil fuels is a gradual process and will take several or several decades. The absence of modern green fossil fuel technologies will continue to cause high levels of pollution of the sector, which will significantly hamper the achievement of the EU's climate target. Any action aimed at improving the quality of the environment and pursuing a climate objective should be eligible for public aid. Therefore, the Polish authorities would like to ask you to add in point 109 of the CEEAG after the wording "oil shale" the following clarification "except for investments aimed at improving the quality of the environment".

Furthermore, as regards the wording of point 109 of the CEEAG, the Polish authorities would like to clarify whether the restriction provided for therein also applies to modernisation investments.

V. Section 4.2 – Aid for improving the energy and environmental performance of buildings

1. Points 114 et seq.

The Polish authorities point out that Section 4.2 of the CEEAG does not **specify which types of buildings may be covered by support for energy efficiency improvements**. Therefore, the Polish authorities would like to ask you to clarify the above-mentioned purpose of the aid.

2. Points 116, 118 and 127

In accordance with point 116 of the CEEAG, aid for energy efficiency may be combined, for example, with the installation of an RES installation to feed the building in question. In the view of the Polish authorities, it should be clearly clarified **how the level of primary energy savings, which is a condition for granting the aid and granting it in increased value, is to be calculated**. If the investment concerns, for example, only a photovoltaic installation, whether the savings should relate only to the electricity consumed in the building or to the total energy consumed in the building (electricity, heat, cold).



3. Point 119

According to Section 4.2, only SMEs and *small mid-cups may benefit from aid for the improvement of the energy performance of buildings*. In the view of the Polish authorities, such a restriction may have a negative impact on the pace of development of the market for energy efficiency services under EPC contracts. The Polish authorities therefore propose to lift this restriction.

4. Point 121

The Polish authorities would like to point out that, in the case of poorer regions facing air quality problems, energy renovation of buildings and investments in RES installations are stimulated by co-financing of investment expenditure and awareness of the short payback period. Eliminating investments that are most effective will discourage people and businesses from improving efficiency and the restriction adopted by the EC will be counterproductive.

5. Point 124

We would point out that it should be borne in mind that there are currently negative real interest rates in many EU countries. As a result, all repayable instruments will not constitute State aid and may be economically unattractive. The Polish authorities therefore propose to amend the wording of this point so that non-repayable support can be granted.

6. Point 134

In the view of the Polish authorities, it is appropriate to clarify the draft Guidelines by indicating specific 'alternative' investments for gas appliances in technological terms and rational for property owners. The restriction adopted by the Commission is incomprehensible and will have the effect of hindering investment. For example, if a building is heated with a coal boiler, the cost of a modern gas boiler is approx. PLN 5 10 Heat pump application - PLN 15 20 Supplying heat pumps with grid energy will be much more expensive than gas and coal. In practice, this means that only the choice between leaving a coal source or investing in gas will remain for investors in the poor region. Therefore, the absence of support for gas will mean the Commission's agreement to the existing pollution.



VI. Section 4.3 – Aid for clean mobility

1. Point 161

The Polish authorities would point out that point 161 of the CEEAG does not indicate which types of fuels may be used for alternative investments to investments in natural gas-fuelled transport. It is therefore appropriate to clarify the provision in question with the indication of the fuel types preferred in this respect.

2. Point 161

With regard to point 161 of the CEEAG, the Polish authorities would also like to suggest that the aid should also be extended to support the infrastructure and not just the vehicles themselves. The high intensity of infrastructure support (85 %) for zero-emission transport such as rail, trolleybus or tram will significantly reduce the number of vehicles emitted on the road.

3. Paragraphs 161 and 163

With regard to points 161 and 163 of the CEEAG, in the view of the Polish authorities, it is appropriate to extend the support also to projects related to the modernisation of buses towards less carbon-intensive fuels - e.g. from ON to CNG.

4. Point 170

With regard to point 170, the Polish authorities would like to stress the need to support all hydrogen charging infrastructure, regardless of its origin, without which it will not be interested in purchasing hydrogen vehicles. The current provision, due to the unavailability of renewable hydrogen, could block the hydrogen transport market and consequently hamper the achievement of the EU's environmental objectives. Therefore, it should take into account the path towards low-carbon and renewable hydrogen.

5. Item 180 (b)

According to point 180(b) of the draft Guidelines, in the case of schemes to support recharging and refuelling infrastructure with hydrogen, a competitive tendering procedure is not required when it cannot be organised. In the view of the Polish authorities, the draft Guidelines should clearly specify which criteria and circumstances are taken into account to justify the impossibility of organising a competitive aid award procedure. In particular, those criteria should refer to the low level of market development for recharging and refuelling infrastructure and for electric vehicles in the Member State concerned.



It should be possible to dispense with the competitive procedure where the share of electric/hydrogen vehicles is less than 1 % of the total number of vehicles in a given Member State.

6. Point 182

It is not indicated which types of investments can be co-financed at the rate of 30 % of the eligible costs. Moreover, the aid intensities indicated in this point are too low to encourage undertakings to invest in alternative fuels infrastructure where alternative fuel vehicles are still very low.

7. Point 186

The Polish authorities would like to point out that during the transitional period it is necessary to support the development of hydrogen refuelling infrastructure, which currently does not exist in Poland. Changing the power supply of vehicles to renewable hydrogen requires significant RES energy surpluses, behavioural changes and time changes.

VII. Section 4.4 – Aid for resource efficiency and supporting the transition to a circular economy

1. General remark

In the view of the Polish authorities, **the objectives of the support should be supplemented by the Waste to Energy projects in section 4.4 of the CEEAG.** According to the Polish authorities, thermal waste treatment installations, while maintaining the waste hierarchy appropriately, can be part of the circular economy. The recovery of energy contained in waste makes it possible to exploit its energy potential if it is not reasonably possible to use it in the recycling or raw material recovery process and avoids waste. The possibility of more extensive substitution of primary raw materials (such as coal, oil, natural gas) with renewable raw materials and waste makes Poland more realistic to implement the objectives of the European Green Deal. Taking this into account, Wte projects can meet the objectives of the circular economy.

2. General remark

Section 4.4 of the CEEAG provides, inter alia, for operational support for operating costs related to separate collection and sorting of waste. On the



given that **recycling** is an extremely important process to ensure the circular economy, this stage of the waste management process (especially where it is not cost-effective) should also be covered by the possibility of providing operational support.

3. Point 204

In the view of the Polish authorities, it is necessary to clarify that the aided investment cannot correspond to economically viable practice. Furthermore, it is unclear that this should be verified from the perspective of practices that are common across the Union and in all technologies, where appropriate. In view of the above, in the view of the Polish authorities, it is necessary to indicate clearly the specific practices, technologies or investments that will not be able to receive support.

4. Point 213

In the view of the Polish authorities, the mechanism for examining the fulfilment of the conditions for increasing aid intensities set out in point 213(a) to (c) of the CEEAG needs to be clarified.

VIII. Section 4.5 – Aid for the prevention or reduction of pollution other than those caused by greenhouse gases

1. Point 231

It follows from the provision that aid for compliance with adopted but not yet applicable Union standards will have an incentive effect if the investment is carried out and finalised at least 18 months before the entry into force of Union standards. In view of the above, in the view of the Polish authorities, **it is necessary to clarify whether compliance with this condition is required only at the stage of application for aid and assessment or throughout the life cycle of the project.** In addition, the Polish authorities would like to clarify whether the fulfilment of the condition should be examined on the basis of the planned schedule at the stage of the application for aid or whether another mechanism is foreseen.



IX. Section 4.6 – Aid for remediation of contaminated sites, restoration of natural habitats and ecosystems and biodiversity solutions and nature-based solutions

1. General remark

In view of the increased ambition and expectations for a critical change within the limits set by the EU Biodiversity Strategy to 2030 and the EU Strategy for Adaptation to Climate Change, including the mobilisation of resources from various sources, the Polish authorities consider **it necessary to propose lighter funding conditions for projects in section 4.6.**

The Polish authorities ask the Commission to consider the possibility of **applying less stringent incentive effect requirements** to aid for the rehabilitation of contaminated sites, the restoration of natural habitats and ecosystems, the protection or restoration of biodiversity and nature-based adaptation solutions to climate change.

The light of higher ambitions and expectations for a critical change in the scope defined by the EUS biodiversity strategy until 2030 and The EU strategy for adaptation to climate change, including the mobilisation of funds from various sources, it is necessary to propose milder conditions for co-financing projects in the section 4.6.)

(Please consider applying less stringent incentive effect requirements to aid for the rehabilitation of contaminated sites, the restoration of natural habitats and ecosystems, the protection or restoration of biodiversity and nature-based solutions for adaptation to climate change.)

2. Point 258

As the aid can cover 100 % of the eligible costs minus the increase in the value of the land, in the opinion of the Polish authorities, **it is necessary to clarify the mechanism for determining the level of aid granted, e.g. by giving a specific example.** In addition, it needs to be clarified whether the 100 % funding applies to all actors.



X. Section 4.10 – Aid for district heating or cooling 1. General remark

As regards aid for district heating or cooling, it is stated that *“if a Member State invests in the modernisation of a district heating and cooling system without complying with the energy efficiency standard, it must commit itself to start working to meet this standard within three years of the completion of the modernisation works.” “Where a Member State invests in the upgrade of a district heating and cooling system without meeting the standard of energy efficiency, it needs to commit to start the works to reach that standard within three years following the upgrade works”*).

In this respect, the Polish authorities ask for clarification as to whether this requirement applies only to networks or also to sources. This is a system, so it would seem to be both types of investment. According to the Polish authorities, investment in sources that will increase the energy efficiency of the system (e.g. through the use of a cogeneration source) should always be possible to be financed under the aid for district heating and cooling, as such investment directly contributes to the achievement of the energy efficiency status of the system. This is not the case with networks which do not affect the status of the system, so that this condition is justified. Consideration should be given to the possibility of introducing that distinction into the rules.

This seems to have been the intention of the Commission, which in its analytical grids (https://ec.europa.eu/competition/state_aid/what_is_new/template_RFF_district_heating.pdf), indicating: *“Investments to build or upgrade the heating generation facilities to render the system”energy-efficient“are made (and works started) within three years from the starting of the works for the upgrade of the distribution network”*, suggests that the project (to which the condition refers) is intended to be a distribution infrastructure rather than a source.

The time limit for carrying out other activities (other than the supported project) leading to the system becoming energy efficient is questionable by the Polish authorities. This indicates the need to start these activities within a period of 3 years from the implementation of the supported project. This means, according to the Polish authorities, that a maximum of 3 years may elapse between the end of the supported project and the start of subsequent activities.



On the other hand, the analytical grids indicate a different term: *“Investments to build or upgrade the heating generation facilities to render the system”energy-efficient“are made (and works started) within three years from the starting of the works for the upgrade of the distribution network”*. In this case, 3 years may elapse from the start of the supported project to the start of the activities leading to the energy efficient status of the system. It is imperative that the condition in question be harmonised, but in the opinion of the Polish authorities the aforementioned condition should be harmonised. The 3-year period should start at the end of the first conditionally supported project. The first project is usually a network project, the implementation of which may take a very long time, usually more than 3 years. On the other hand, the smaller district heating companies in particular are unable to run two projects in parallel.

2. General remark

In the view of the Polish authorities, it seems appropriate to apply the non-aid approach due to the natural monopoly currently presented directly to electricity and gas grid infrastructure (point 333 of the CEEAG), including district heating networks. The arguments put forward may apply to all network infrastructures and therefore also to district heating networks. The Commission’s position expressed in the Recovery AND Resilience Facility - STATE AID Guiding template: District heating/cooling generation and distribution infrastructure (paragraph 38). The lack of explicit provisions in this regard in the CEEAG does not promote transparency and consistency of approach, especially since the provisions of the STATE AID Guiding template provided a basis for the preparation of projects on the basis of the Commission’s assumptions on the lack of aid in the case of district heating networks. That is because, if district heating networks are covered by the rules on public aid, compliance with the conditions for granting it, as set out in paragraph 347 of the CEEAG, may be significantly impeded or even impossible.

3. Paragraphs 340-349

The Polish authorities appreciate the fact that support for district heating systems which do not meet the definition of energy efficient systems is included in the draft guidelines. At the same time, in the view of the Polish authorities, it is appropriate to introduce provisions providing for a hierarchy of support in line with the principles of EU cohesion policy and the need to step up decarbonisation efforts. In the first instance, support should be channelled towards investments in energy-inefficient systems in order to become efficient. Aid is



needed in particular where the worst situation is at stake,

and environmental impacts can be the highest. Such schemes should be supported as a matter of priority and should have a favourable level of assistance. Support for systems that are already effective should be implemented as the pollution they introduce into the environment is lower.

4. Point 343

In the view of the Polish authorities, the Commission's greater flexibility as regards the possibility of supporting investments in the modernisation of district heating systems which do not meet the criteria for an energy efficient district heating system should be welcomed (point 343 of the CEEAG). At the same time, due to the fact that approx. 80 % of district heating systems in Poland do not meet the above criteria, and changing this situation may require multi-annual investments, it is reasonable that the deadline for taking measures to achieve the status of efficient system should be extended from three to five years.

5. Point 344

The use of "systems using waste, including waste heat" in point 344 of the CEEAG indicates that the use of waste for energy production (e.g.: RDF) makes the system energy efficient and therefore a waste incineration plant with heat production (with or without additional electricity production) may benefit from the aid referred to in this section. Therefore, the Polish authorities would like to confirm this interpretation and clarify the draft guidelines accordingly.

6. Point 347

In the view of the Polish authorities, consideration should be given to discontinuing provisions that limit support for district heating networks if they operate in systems where the source is based on the most polluting fossil fuels (point 347 of the CEEAG). If the system meets the definition of an efficient system (including where the scheme has an efficient status based on the fulfilment of a minimum of 75 % heat from cogeneration, including coal-fired cogeneration), then the restrictions referred to in point 347 of the CEEAG on the possibility to support the network should not apply. In the view of the Polish authorities, it seems particularly restrictive to require a ban on connecting new users (if this would lead to an increase in heat production in sources based e.g. on coal) - in the case of Poland (given that coal is still the dominant fuel in the national heating sector), it may mean that projects to connect facilities to eliminate so-called low emissions are not supported. It should be noted that, due to the fact that funding is often obtained



a key condition for the implementation of the above-mentioned types of projects, the impossibility of granting public aid for such investments will have a negative impact on measures to improve air quality and may, in the opinion of the Polish authorities, pose a critical threat to the achievement of the target of 70 % of households in urban areas being connected to the district heating network in 2030. It is therefore appropriate to derogate from the conditions set out in paragraph 347 of the CEEAG where the objective of the aid is also to combat low emissions and improve air quality. In particular, the Polish authorities propose to exclude from point 347(c) of the CEEAG the prohibition on connecting additional customers to the network in cases where the plant is upgraded within 3 years of the start of the investment in the distribution network.

7. Point 348

With regard to point 348 of the CEEAG, in the case of projects involving high-efficiency cogeneration gas units, the granting of public aid should not, in the opinion of the Polish authorities, entail additional obligations on the beneficiary referred to in the last sentence of this point. The need to comply with such obligations (e.g. to implement additional investments or to exclude the gas unit in the future) would seriously hamper the ability to obtain funds for the implementation of the investment in CHP units in Poland, which could, as a consequence, significantly slow down the necessary process for the conversion of heating and would prevent the achievement of the objective that in 2030 a minimum of 85 % of district heating systems (with a capacity above 5 MW) meet the criteria of an efficient system.

XI. Section 4.11 – Aid in the form of reductions in electricity charges for energy-intensive users

1. General remark

In the view of the Polish authorities, the achievement of climate objectives requires that Member States implement an ambitious decarbonisation policy in order to significantly reduce EU greenhouse gas emissions by 2030 and achieve climate neutrality by 2050. The draft Guidelines still allow for such a policy to be financed by regulatory levies on energy consumption. We stress that the continuation of existing charges and the emergence of new charges will significantly increase energy costs for industry. Energy costs have a key impact on the cost competitiveness of energy-intensive industries and their global market shares. However,



maintaining production capacity in the EU not only provides jobs and economic development for the EU, but also provides the basis for climate policy financing, including the development of renewable energy sources and other environmentally friendly technologies. The practice of Member States shows that the provisions on reductions in regulatory fees in the EU related to energy and environment in general should be maintained in the draft CEEAG guidelines. Most Member States apply different types of reductions from regulatory fees for energy-intensive operators, which become the more important the more ambitious the EU's climate targets are.

2. Point 350

With regard to point 350 of the CEEAG, the Polish authorities would like to draw your attention to the risk of an excessive increase in the environmental tax burden. Measures to increase environmental costs can prove counterproductive to the environment. Under the burden of public-law levies, companies can transfer their production to third countries where environmental costs are significantly lower.

3. Point 354

The Polish authorities would like to draw your attention to the limited list of fees for which reductions may be applied. In accordance with paragraph 354 of the CEEAG, regulatory fees that finance climate objectives may be reduced. However, the guidelines limit the possibility of introducing reductions only for support for RES, cogeneration, social tariffs and energy prices in isolated regions. The possibility of applying reductions on charges financing capacity mechanisms, charges for other energy products and network tariffs is excluded. Together with a more holistic approach to decarbonising the economy, different actions and areas to reduce greenhouse gas emissions are identified. However, it was not decided to extend the approach to reductions in climate financing charges for energy-intensive users most exposed to carbon leakage. The climate transition is a multifaceted challenge and the development of RES (and CHP) in electricity is only one important element of this process. Moreover, the mere possibility of developing RES in electricity is also an extremely complex issue and does not depend solely on direct support for renewable energy operators.

One of the most important aspects of increasing RES capacity in the system is the technical capacity of the electricity grid. The existing network infrastructure was designed to operate in another energy business model and it is therefore essential to upgrade and expand it urgently. Generation problem in low networks is already on the rise



voltages (prosumers) where energy cannot be absorbed by technological constraints on distribution networks. The development of RES capacity in the system is expected to continue in the EU and Poland in the coming years, but this will not be possible without the grid that can absorb green energy and allow it to flow to end-users. It is also necessary to increase cross-border exchange opportunities, introduce smart grids or build infrastructure for power extraction from offshore wind farms. All this translates into large network investments, which will undoubtedly be financed by network tariffs on end-users, including vulnerable energy-intensive users.

Apart from the technical capacity of the grid, the **development of RES also depends on the ability to provide capacity reserves in the system**. RES such as photovoltaics and wind are characterised by a non-controlling variable production profile, while for system security and continuity of supply, there is a need for controllable capacities that provide energy during periods of non-existent RES production. On the one hand, the increasing amount of cheap RES in the system is crowding out more expensive emitting units from the market, reducing their working time and worsening their financial performance, which affects the cost-effectiveness of maintaining or building them. **On the other hand, the further development of RES depends on the presence of a sufficient amount of steerable power. This problem has led to the implementation of capacity mechanisms** in which final customers bear the costs of maintaining capacity in the system, which is necessary for the further and even more intensive development of RES.

The further development of RES is also linked to the development of modern energy storage solutions and increased grid flexibility, including hydrogen technologies. It is conceivable that dedicated support mechanisms for such technologies will be set up in the future, financed by charges imposed on end-users.

In the view of the Polish authorities, the **limited list of charges for which it is possible to apply reductions is a significant defect in the purpose of the aid in question**. According to the Polish authorities, the draft guidelines should secure reductions for energy-intensive users on all mechanisms contributing to the decarbonisation of the economy and the development of RES, which are financed by electricity levies as well as charges related to the maintenance of capacity in the system.

4. Paragraphs 359-361

The Commission has proposed to consider aid proportionate if the beneficiaries bear at least 25 % of the costs. In the view of the Polish authorities, this solution leads to



to reduce the existing maximum level of relief (15 % of costs incurred). The possibility to reduce the costs for the most energy intensive operators to 1.5 % of GVA (previously it was possible to reduce costs to 0.5 % of GVA) was also reduced. The reduction of reductions is detrimental to energy-intensive businesses, significantly reducing their competitiveness. In view of the increasing decarbonisation challenges of energy-intensive operators and pressure from third countries, increasing the burden on energy-intensive operators in the EU can have disastrous consequences. In the view of the Polish authorities, it is reasonable to maintain the maximum levels of relief at the current level.

XII. Section 4.12 - Aid for closure of coal, peat and shale plants bituminous

1. General remark

The draft guidelines introduce a new type of aid to support the closure of coal-fired power plants, peat or oil shale, and potentially also production activities for these fuels. Separate rules are to apply to:

- aid for the early closure of profitable coal, peat or oil shale activities, in particular to cover foregone profits. Support will be provided as far as possible through competitive bidding processes based on quantified environmental benefits to ensure that the most efficient projects are supported. It should also be stressed that, according to point 377 of the draft guidelines, support is intended to cover only 'additional costs resulting from the early closure of the unit', so that costs which would also have been incurred in the counterfactual scenario are not covered by the definition of those costs. Thus, the draft Guidelines seem to exclude any operating aid to closed entities. A similar approach has also been adopted in the context of aid to cover the exceptional costs of closure of unprofitable units;
- aid to cover social and environmental costs resulting from the closure of unprofitable coal, peat or oil shale activities. However, costs arising from non-compliance with environmental regulations and costs relating to current production will not be covered.



In the context of the conditions for granting aid under the objective in question, we would like to draw your attention to the need to clarify the mechanism for supporting the closure of units before their useful life, including as regards the valuation of coal assets prior to the spin-offs.

2. General remark

The aid referred to in Section 4.12 concerns support for the closure of coal, peat and oil shale plants. The Polish authorities would like to point out that it follows from point 367 of the CEEAF that aid measures may also potentially cover mining activities related to these fossil fuels. At the same time, paragraph 385 of the CEEAG indicates that this section applies to the extent that the measure is not covered by the Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines. Since Annex 2 of the Guidelines refers to actions similar by nature to those supported under the above-mentioned Decision, the demarcation line between the measures authorised under the draft guidelines and those resulting from the Council Decision is not clear. In the view of the Polish authorities, it is therefore necessary to clarify to what extent mining activities would be covered by the draft Guidelines.

XIII. Section 5 -

Evaluation 1. Point

414

In point 414 of the CEEAG, the draft Guidelines require **Member States to amend their existing environmental or energy aid schemes in a manner that takes account of the Commission's new Guidelines**. It is therefore assumed that already existing, in particular multi-annual, aid schemes which were subject to verification and assessment by the Commission on the basis of the then applicable Guidelines and the legal situation in force at the time of such verification will need to be adapted to the new rules. This may constitute a breach of the principle of protection of acquired rights and legitimate interests in progress. In the view of the Polish authorities, it is not justified to require Member States to amend the aid measures currently in force following the subsequent adoption of the new Guidelines. In other words, if in accordance with Article 108. 1 TFEU would allow for the adaptation of aid schemes and this should not have the effect of requiring changes to individual aid measures already granted.



XIV. Annexes to the draft guidelines

1. **Annex 1.** In the view of the Polish authorities, **limiting the list of companies eligible for support will have a negative impact on the economic situation across the EU and may weaken the EU's competitiveness on international markets**, especially in view of the effects of the COVID-19 crisis. An example is the failure to take into account the **technical gas production** sector, which is an important part of the value chain of other sectors at risk of carbon leakage. Consideration should be given to amending the criteria proposed in the CEEAG guidelines so that key sectors for other sectors most directly exposed to carbon leakage also have the possibility to benefit from reductions. The issue of supporting the production of technical gases is of key importance.
2. We propose to maintain an annex to the EEAG 22 which would include a table with aid intensities for investment aid as part of the eligible costs with sections for SMEs and large enterprises and information on regional bonuses, as in Annex I to the EEAG 2014. The current table is helpful in working with the guidelines.

(We propose to maintain the annex to EEAG 22 that would contain the table with the aid intensities for investment aid as a part of the eligible costs with the sections for SMEs and large enterprises and the information on regional bonuses as it is in the Annex I of the EEAG 2014. The current table is Helpful for work with the guidelines.)

In addition, the Polish authorities enclose detailed comments on the draft guidelines in English.

Yours faithfully,
Katarzyna Kukuc
Deputy Director
Department of Monitoring
State aid
/signed electronically/

Annex - The text of the CEEAG draft communication with detailed comments.

