**Public Consultation for the Revision of the Guidelines on State aid for Environmental protection and Energy 2014-2020 (EEAG)**

**Context**

* EU transport is currently 94% reliant on oil and accounts for one quarter of EU emissions. The EU’s transport emissions are 20% higher than in 1990 and its dependence on fossil fuels has decreased by a mere 2.1% since the 2020 climate and energy package was adopted in 2009.
* Sustainable biofuels account for over 89% of the renewable energy in transport, incl. 60% for crop-based biofuels. With average certified GHG emissions savings of more than 72% compared to fossil petrol, European renewable ethanol represents an immediate and cost-effective tool to reduce emissions of the existing and future light and heavy-duty vehicles. Biofuels use should not be limited to transport modes that cannot be electrified.
* We are mainly interested in guidelines 112, 113, 114 and 121 of the current EEAG, with regard to so-called investment and operation aids granted to biofuels, some of which should be amended.

**The treatment of crop-based biofuels should be revised**

As found out by the Commission’s evaluation carried out from 7 Jan. 2019, there is room for improvement for the current EEAG and in particular ‘*more could be done to contribute to the Energy Union, by aligning the recent legislation in the energy field and further promoting competition and market integration’.*

Furthermore, as regards the treatment of crop-based biofuels, the evaluation echoes the concerns of several associations, i.e. *‘the inconsistency between the EEAG provisions and the Recast Renewable Energy Directive, on the one hand, and the Energy Tax Directive (ETD) 2003/96/EC, on the other hand. The same conclusion was also reached by the Evaluation of the ETD’*.

**The context under which the existing Guidelines were adopted is no longer valid**

Indeed, the existing EEAG were drafted at a time where the ‘food versus fuel’ and ILUC debates were hijacking the biofuels discussions, neglecting their vast potential to support the EU‘s climate ambitions. Since then, all controversies surrounding European crop-based biofuels, and ethanol in particular, have been debunked:

* In the 2015 and 2017 Renewable Energy Progress Reports, the Commission already confirmed that European ethanol had negligible impact on cereal prices and did not negatively impact food security. More recently the 2020 Renewable Energy Progress Report reiterated that no correlation between food prices and biofuel demand in the EU in the recent years could be observed. In addition, Member States reported limited cultivation of feedstock used in biofuel production (which, in total, accounts for 3% of EU cropland) compared to total agricultural activities and therefore consider that associated environmental impacts are low.
* The GLOBIOM study of the land use change impact of biofuels consumed in the EU also confirmed both that European ethanol poses no negative impacts to food security and has low risk of land use change impact. This was further confirmed by the 2019 delegated Regulation on high ILUC-risk biofuels and its accompanying Report on the status of production expansion of relevant food and feed crops worldwide, based on the best available scientific data.
* The most recent Communication on the progress toward the Fuel Quality Directive also confirms the importance of biofuels to decarbonise transport fuels, both in terms of quantities and GHG savings. It confirms that European ethanol saves above 70% GHG emissions on average compared to fossil fuel and has no or very limited ILUC impact.

**There are no legal grounds to discriminate against sustainable biofuels, on the contrary**

* The Renewable Energy Directive sets clear and stringent sustainability criteria, incl. minimum GHG savings performance, for all biofuels to count towards the renewable energy targets. Granting aid to biofuels that are sustainable within the meaning of Article 29 of RED II is therefore fully justified. Member States should not refuse to support biofuels that are certified as sustainable, e.g. through differentiated taxation.

*Art. 29.1: Energy from biofuels, bioliquids and biomass fuels shall be taken into account for the purposes referred to in points (a), (b) and (c) of this subparagraph only if they fulfil the sustainability and the greenhouse gas emissions saving criteria (…):*

*(c) eligibility for financial support for the consumption of biofuels, bioliquids and biomass fuels*

*Art. 29.12: For the purposes referred to in points (a), (b) and (c) of the first subparagraph of paragraph 1 of this Article, and without prejudice to Articles 25 and 26, Member States shall not refuse to take into account, on other sustainability grounds, biofuels and bioliquids obtained in compliance with this Article. This paragraph shall be without prejudice to public support granted under support schemes approved before 24 December 2018.”*

* Furthermore, discriminating between crop-based and advanced biofuels is not justified according to the EU’s Renewable Energy policy post-2020. The phase-out of policy support for crop-based biofuels in transport coupled, principle upon which the current EEAG are based, has been rejected by the co-legislators, first in the ‘ILUC Directive’ 2015/1513 and more recently in RED II. On the contrary, the co-legislators have renewed their support to all sustainable forms of biofuels: o Sustainable biofuels, both crop-based and advanced ones, can count towards the obligation put on fuel suppliers to provide at least 14% of renewable energy in the transport sector by 2030;

The contribution of crop-based biofuels to the renewable energy target in transport shall be no more than one percentage point higher than their 2020 share, with a 7% maximum; crop-based biofuels can still be used beyond that cap, but would not count towards Member States’ RED targets.

RED II limits the phase-out of support to ‘high-ILUC risk’ biofuels, as defined in the Commission Delegated Regulation on high and low ILUC-risk biofuels (i.e. palm oil biofuels);

Advanced biofuels, defined as those made from Annex IX-A feedstock (a definition that is lacking in the State aid guidelines), are subject to a dedicated ramping-up sub-target, reaching 3.5% of the energy in transport by 2030.

* It would be inconsistent to have the RED II legislation supporting crop-based biofuels and the EEAG banning support to the same biofuels.

The Commission State aid guidelines should not contradict nor undermine EU primary legislation but rather reflect the decision from the Council and the European Parliament to continue to support the use of crop-based biofuels.

Member States should be free to devise policies, including supportive measures for all sustainable biofuels that can help them meet their renewable energy targets and the binding non-ETS emission reduction targets, incl. transport, for which no cap on crop-based biofuels applies.

**Support schemes are justified where they create a level playing field for biofuels to compete with fossil energy sources and thereby increase the level of environmental protection.**

* The current volume-based approach to energy taxation leads to a paradoxical situation where renewable fuels – in particular renewable ethanol – are by far the most taxed source of transport on an energy content basis despite the numerous benefits associated with blending renewable ethanol in petrol, including lower CO2 emissions and reduced non-CO2 tailpipe emissions. Because of the lower energy density of ethanol compared to petrol, the volume consumption increases over the same distance. As a result, the tax burden is higher for clean renewable transport energy than for fossil energy. On a Euro per gramme of CO2 equivalent basis, every gramme of biogenic CO2 emitted from ethanol is taxed up to 10 times more than fossil CO2 emitted from petrol. This is valid for all ethanol blended with petrol but aggravates in the case of higher blends, such as E85 and ED95, which could not make it competitively to the market unless differentiated taxation applies.
* Furthermore, as long as the external costs of fossil energy (on human health, the environment and in terms of energy security) are not internalised, the need to support renewable energies will remain.
* Last but not least, given that crop-based biofuels are the only immediate way to decarbonise transport and reduce our dependency on oil, given that supporting measures for biofuels are a prerequisite to counterbalance the massive subsidies that oil companies benefit from, abandoning support to crop-based biofuels would make it totally impossible for the EU to achieve the EU’s climate and energy goals, in particular the share of renewable energy in transport and non-ETS emission reduction targets.

**We therefore see no ground to rule out the possibility to grant operating aid for sustainable crop-based biofuels post-2020, in particular when support schemes aim at promoting the use of sustainable biofuels that would not otherwise be competitive with a supply or blending obligation only, and**

* call the Commission to amend guidelines 113, 114 and 121 of the current EEAG. As per the opinion of the Commission on the Swedish tax exemption for higher biofuels blends, we believe that post 2021, the sole restrictions on operating aid for crop-based biofuels should be that

they remain limited to the crop cap imposed by the RED II;

operators must demonstrate compliance with the sustainability criteria;

high-ILUC risk biofuels defined in the 2019 delegated Regulation on high ILUC-risk biofuels should not be eligible;

they do not result in overcompensation, as is the case today.

* call for a continuation of investment aid for advanced biofuels as foreseen in existing guidelines 112.

**Enabling provisions for RES support:**

The Commission announced its plans to transform the European energy system into a decarbonized, cost-effective system based on renewables and other low-carbon sources. If this is the case, EEAG should retain the State aid (both investment and operational one) to support RES. As regards investment aid, we call for higher intensity of State aid than today. Such incentive could bring additional impetus for Member States and individual investors to build new sources, thus reinforcing also Union’s energy and climate targets.

Moreover, the State aid in this regard should be allowed not only for newly built RES, but also for modernization and retrofitting of the existing ones. It is a matter of fact that there is a lot of RES already in place which are at the end of their subsidy schemes (in particular solar or wind) or they are already in operation for several decades (mainly hydro power plants) – without further incentives, they might lose their competitiveness or operational reliability, thus hindering also the attainment of proclaimed energy and climate goals. Therefore, keeping existing RES as an integral part of the energy system and enabling their modernization and retrofitting could be more cost-effective than supporting purely deployment of newly installed RES.

In Slovakia, this could be the case of the existing hydropower plants (run-of-river hydropower plants, as well as pumped-storage hydropower plants) which substantially contribute to high share of electricity generation without CO2 emissions. By their modernization or retrofitting could be provided higher RES production, as well as more flexible and balancing services for the electricity network. It is needed to keep in mind that this infrastructure was built decades ago and it requires further investments in order to keep and even increase their importance in the whole electricity system to contribute to proclaimed EU climate and energy objectives.

**Enabling provisions for supporting storage facilities:**

It should be ensured that the revised EEAG allow for State aid for storage facilities, including the pumped-storage hydropower plants. Any support for storage facilities should be non-discriminatory and technology neutral. It should be equally supported not only to construct any newly built storage facilities, but also to enable the modernization and retrofitting of the existing infrastructure. In particular, enabling the modernization and retrofitting of the existing storage facilities (including the pumped-storage hydropower plants), the respective energy system gains

additional capacity for integrating higher share of RES, thus providing the required flexibility of the grid by balancing the intermittent RES.

In Slovakia, there is currently high capacity of storage facilities namely thanks to the pumped-storage hydropower plants. By their modernization and retrofitting, we could reach much higher efficiency, flexibility and extend their life-time. It should be highlighted that existing pumped-storage hydropower plants are storage facilities and their environmental effect is much more positive comparing to other newly built storage facilities.

**Enabling provisions for supporting hydrogen generation facilities:**

In line with the recently announced EU Hydrogen Strategy, the revised EEAG should incorporate also the support for building the new hydrogen generation infrastructure, both for renewable and low-carbon hydrogen production as the way for decarbonisation of various sectors of economy. The State aid should be aimed at renewable and low-carbon electricity production used for hydrogen production, as well as for deployment of new electrolysers as such. As hydrogen seems to be the future energy carrier, it should be guaranteed that the State aid intensity would be as high as possible to motivate investors for building such facilities. It is mainly underpinned by the fact that building RES or low carbon hydrogen generation facilities could not be currently feasible based on market conditions, but requires significant amount of support. Such approach would contribute, primarily, to the development of hydrogen infrastructure and, secondary, enhance further the ability of local energy systems to integrate more RES.

In Slovakia, we see the potential of hydrogen production mainly for industry decarbonisation and development of sustainable mobility in medium-term to long-term perspective.

Enabling provision for supporting environmental remediation and land restoration in regions in transition:

The revised EEAG should also include the possibility to support the greening of industrial areas in regions in transformation and reflect at least conditions governed currently by GBER. Under the term “greening”, we understand various activities linked not only to environmental remediation and land restoration, but particularly to preparation of the environmentally harmed sites for further deployment of RES. Such areas should be enabled for the support preferentially if they are located in coal regions in transition. In such cases, any support for these “greening” activities would not only mean a contribution to just transition in the given region, but also to improvement of the environment and to achieving the energy and climate goals of the EU.

**Capacity Mechanism:**

First of all, we propose that EEAG with regard to capacity mechanisms shall incorporate and reflect all relevant provisions of the Regulation (EU) 2019/943 of the European Parliament and Council on the internal market for electricity. Before the adoption of capacity mechanisms, Member States should carry out and perform proper resource adequacy assessment at the EU level and at the national level in line with relevant provision of the Regulation 2019/943 and other related legislation. Further, it must be ensured that there are no restrictions for cross-border participation to capacity mechanisms. It practically means that it is necessary to ensure that existing capacity mechanisms will not contain any discriminatory conditions between domestic and foreign capacity providers. In this regard we call for careful assessment of existing capacity mechanisms already in place and, if necessary, apply the relevant remedial actions at hand.

**State Aid Intensity:**

The State aid intensity should be governed by these principles:

a) higher intensity of State aid in regions hit by just transition (i.e. green transition of the coal regions);

b) higher intensity of State aid for activities directly supporting the energy and climate goals promulgated by the European Green Deal (mainly deployment of new RES and storage facilities and retrofitting of existing RES and storage facilities);

c) subsidising newly announced energy priorities of EC (e.g. renewable and low-carbon hydrogen generation)

In general, the State aid should be predominantly aimed at less developed regions (and even more intensively at regions hit by the transition) by providing higher intensity of the aid than in other regions. If you consider that more State aid to support environmental objectives should be allowed, what are your ideas on how that should be done?

1. Should this take the form of allowing more aid (or aid on easier terms) for environmentally beneficial projects than for comparable projects which do not bring the same benefits (“green bonus”)? If so, how should this green bonus be defined?
2. Which criteria should inform the assessment of a green bonus? Could you give concrete examples where, in your view, a green bonus would be justified, compared to examples where it would not be justified? Please provide reasons explaining your choice.

In general, the idea of supporting environmental objectives through State aid seems to be interesting – we perceive the European Green Deal aligned EEAG as the best expression of such approach. However, any such support should be expressly covered by EEAG and directly aimed at supporting environmental objectives in the areas and in a manner expressed above. Under certain circumstances, the concept of green bonus might be introduced in the revised EEAG, however, its definition seems to be extremely challenging and hardly feasible. Nevertheless, it would be very dangerous if the green bonus concept would lead to any case of exclusion of support, especially in cases and regions where the socio-economic situation is difficult and any unjustified denial of support could lead to further deterioration of local living conditions.

How should we define positive environmental benefits?

c. Should it be by reference to the EU taxonomy and, if yes, should it be by reference to all sustainability criteria of the EU taxonomy? Or would any kind of environmental benefit be sufficient?

We do not see the EU taxonomy framework to be an appropriate and well placed instrument in this case. Under the current knowledge and status of the work in this area it could restrict areas of support to certain amount of technologies and, thus, restrict the potential of other technologies to contribute to the climate and energy goals (mainly to the decarbonisation ones). This could make it difficult for certain Member States to follow the decarbonisation pathway in the future. Even more, today, the taxonomy framework is still not a closed, but rather a living and evolving instrument which makes this issue even more difficult. In this perspective, we do not find the EU taxonomy as a suitable reference instrument in the up-coming EEAG revision.