Commission Public Consultation

Communication on the revised Guidelines on State aid for Climate, Environmental Protection and Energy (CEEAG)

In the context of the revision of the energy and environmental State aid Guidelines of 2014, several modifications are being considered: scope extension, enhanced flexibility and simplification of the existing rules, better targeting and improved coherence with other EU environmental and energy policies.

Overall, AFEP (the French Association of Large Companies) welcomes this revision as it contributes to the clarification of these Guidelines by structuring them more efficiently and by integrating the climate dimension in its scope, to fit with the Green Deal objectives and the "Fit for 55" package which was adopted on 14 July 2021.

However, member companies underline that the reading of the Guidelines will be facilitated once the General Block Exemption Regulation (GBER) revision is published, notably due to the expected clarifications on the threshold triggering aid measures.

Besides, companies are in favour of assessing the CEEAG Guidelines in a broader dimension, complementary to the RDI State aid framework and to a national and a European industrial policy that is compatible with the Green Deal (e.g. IPCEIs). Such integration will allow supporting of the European innovation and industrial redeployment that are crucial to achieve the EU climate goals with European technologies, in the context of intense global competition driven by the strategic intervention of States willing to lead in the field of low-carbon technologies.

First of all, companies would like to make general comments on the draft Guidelines (part 1), before making more specific remarks (part 2).

1. General comments

While more traceability on the investments made benefiting from aid is welcome, this must be accompanied by a number of simplification conditions developed below:

a) Transparency requirements to be balanced

The transparency requirements appear to be administratively burdensome and a source of risk as it provides numerous information to the companies' competitors.

Paragraphs 56 and seq. are reducing the aid transparency threshold from €500K in 2014 to €100K in 2021.

This increase in transparency requirements has only a very limited safeguard role and goes against the technological sovereignty desired by the EU. Companies point out that the transparency required on "relevant information about supported activities" amounts to providing a lot of information to third parties – even if some of it is made confidential before publication. Such a decision would lead to the multiplication of information sources for competitors located in third countries and would thus be detrimental to European companies.

Companies are therefore in favour of maintaining the 2014 transparency requirements threshold for aid above €500 000.

Besides, paragraph 58 on the tax reductions is based on a very fine sequencing of the information and then adds a new granularity compared to 2014. Beyond the €30 million threshold, the granularity is broken down

into a much finer series, and becomes a valuable source of information for competitors, without these new thresholds being justified.

Companies are advocating for maintaining the 2014 provision on the €30 million threshold.

b) Simplifying the counterfactual scenarios

The implementation of counterfactual scenarios is a very complex exercise. It leads to extensive debate among stakeholders, especially when it comes to incentive effects (paragraphs 27 and seq.).

The main purpose of State aids is to encourage Member States to support national or cross-border projects, notably in environmental, climate and energy issues that have become central and strategic for the future of the EU.

Without denying the interest in considering counterfactual scenarios, companies regret that they are very time-consuming in the context of a rapid and agile global competition, especially in forward-looking areas of R&D&I that are precisely intended to propel Europe into a new economy. The need for counterfactual scenarios must be limited to the most important projects (IPCEIs).

Companies suggest that the Commission's legitimate questions come closer to the economic reality (less theoretical, requests limited to retroactive scenarios over a maximum of 5 years, etc.) and thus enable economic players to meet them within a reasonable timeframe.

2. Specific comments

a) Need to make operating aid possible (OpEx)

In paragraph 103, it seems important to make more systematic the possibility of operating aid (OpEx) for certain (to be defined) low-carbon technologies, without requiring Member States to provide new proof of the improved environmental impact of these technologies. For instance, the electrification of industrial processes via low-carbon electricity will lead to significant additional costs in OpEx that should be adequately supported.

The possibility for companies to beneficiate from OpEx support for certain technologies should be included in different categories of aid, and thus inserted at the beginning of Section 4 of the draft Guidelines (not exclusively in Section 4.1.).

Furthermore, operation aid must also be possible for certain installations including after their depreciation (as laid down in paragraphs 132 and seq. of the 2014 Guidelines for biomass plants).

b) Clarifying the treatment of avoided emissions

In paragraph 98 regarding the aids for avoided emissions, it is crucial to set harmonised methodologies allowing to compare aid measures. Indeed, each decarbonisation project is specific and the definition of a reference scenario (without changes in GHG emissions) requires assumptions which be may be different to calculate the avoided emissions. However, to avoid disputes, avoided emissions should be calculated by relying as much as possible on international, European or national or at least more generic cross-sectoral benchmarks. At a minimum, the principles defined in the ISO 14064-1 standard on carbon accounting for organisations should be used.

In addition, the methodologies used should be subject to a critical review by independent third parties with expertise in carbon accounting and the activity concerned. How this critical review was carried out should be clearly explained. Any communication on avoided emissions from a low-carbon project should also follow the disclosure requirements of ISO 14025 and 14067 on the carbon footprint of products as well as the aforementioned general standard ISO 14061-1.

c) Further precisions on public consultations

In paragraph 85 on public consultations to be launched by the Member States, companies ask whether the criterion in (a) and (b) relating to the estimated average annual aid of €150m relates to the sum of projects for one Member State or all EU Member States. Given the potentially large number of mechanisms, companies ask for the second solution to be retained.

Furthermore, regarding this paragraph, companies wonder how the public can be consulted on the calculation of avoided emissions compared to a baseline scenario, as the necessary information is very specific and is thus difficult for non-specialists to understand. Therefore, they consider that such a consultation should be replaced with an analysis of the methodology carried out by the Commission.

d) Annual update of the analysis of relevant costs and revenues

In paragraph 80, the introduction of such an annual analysis should not lead to the suspension of aid for the following year, but to a review.

e) Case by case studies

In paragraph 105, companies wonder why case-by-case assessments should be carried out for dedicated infrastructure projects. This would be **discriminatory compared to other projects that do not qualify as dedicated infrastructure**. This would be all the more unjustified as projects defined as dedicated will play a key role in the decarbonisation process of the industrial sector and can at any time be turned into integrated cross-border projects. This provision should therefore be deleted.

f) Link with the Taxonomy

As repeatedly stated by Commission representatives, the taxonomy is not intended to become a standard used systematically by all European legislation and regulations. Its objective is to identify financial instruments as green in order to facilitate their financing. Thus, there is **no need to link the taxonomy and the guidelines** (paragraphs 69 and 113). Such a link would inevitably lead to the exclusion of research or development programs that could lead to technologies that are useful or essential for the ecological transition. Furthermore, the taxonomy will be far from complete by 1 January 2022, when the new Guidelines come into force.

g) Aid intensity of electricity tax reduction for energy-intensive users

In Section 4.11, the Commission proposes to reduce the maximum aid amount to 75% of the costs generated by the electricity levies which a Member State includes in its scheme, instead of 85%, and to increase the maximum overall amount to be paid to 1.5% of the gross added value of the company, instead of 0.5%.

Given the EU climate ambition, the development of renewable energy is still largely dependent on public support, which will have to increase. Against this backdrop, it is crucial to secure the energy-intensive industry at the same level as it is currently.

In addition, the Commission is seeking to make the reductions subject to three conditions (paragraph 365):

- The first condition relates to energy efficiency, which overlaps with the Energy Efficiency Directive (EED) as it already deals with this issue (and it is currently under review);
- The second condition refers to the conclusion of carbon-free Power Purchase Agreement (PPA). In France, at this stage, this condition is not yet either technically or economically mature. Indeed, prices are not competitive and available volumes are captured by the French Energy Regulatory Commission's (CRE) tenders;
- The third condition relates to investment in projects performing better than the benchmarks already corresponding to the top 10% of performance. This condition is contrary to the continuous improvement that characterises industrial evolution. This will indeed lead industrials to invest only

in breakthrough technologies that have not been tested at the industrial level, which represents a very significant technological risk for companies.

Therefore, **companies are in favour of maintaining the current 85% threshold and the 0.5% of the gross added value, without any condition**.

h) Specifications on energy infrastructures

In paragraph 75, it is not clear why certain infrastructure projects, such as **hydrogen** or other low-carbon gases, **carbon capture and storage (CCS) or carbon capture and use** (CCU) projects, would not qualify as energy infrastructures.

i) Scope

To ensure fairness between in-house and outsourced producers of industrial gases, it is necessary to **keep outsourced producers of industrial gases (NACE Code 20.11) in Annex I** of this draft, as it was the case in the 2014 Guidelines. The specialisation of this outsourced activity leads to environmental performance that is better or equal to that of in-house producers.

Furthermore, the **definition of "clean transport" aircraft** under paragraph 18 (d) and (h) is too restrictive and should be amended:

- **Concerning acquisition or leasing, the requirement should be consistent with the screening criteria under development in the context of the EU Taxonomy.** This would provide an incentive to purchase less CO2 intensive generation of aircraft, thereby triggering an immediate and significant positive impact on emissions. Maintaining the currently proposed threshold would impede any such positive impact on CO2 emissions.
- **Concerning aircraft replacement, the condition that the replaced aircraft should exceed** the latest noise and emissions environmental protection standards for "New Type" aircraft under ICAO rules would de facto rule out any possibility to use this mechanism in any foreseeable future, and would deprive from the associated climate benefit. The requirement should apply instead to the aircraft which is replacing the older one.

j) Exemptions to the principle of technological neutrality and conditions surrounding calls for tender

Companies welcome the opening to all solutions that can contribute to GHG reduction. However, it is crucial to allow Member States to issue calls for tenders that are specific to certain technologies based on the justifications listed in paragraphs 83 and 90. **An approach solely focused on technological neutrality would lead to picking winners at a too early stage. This would prevent or slow down the development of less mature and more expensive technologies that would have a significant cost reduction potential in the future**.

This is the case for renewable hydrogen, which is currently not yet competitive compared to other types of low-carbon hydrogen. Separate calls for tenders for wind, solar and biomethane should also be maintained. This would allow the synergies of these technologies to be exploited to the greatest extent possible, to facilitate the integration of systems and to reduce costs.

Exemptions to tendering should be possible for smaller projects. The thresholds stated in paragraph 92, notably for electricity generation and storage projects, are introducing a too radical change. The current Guidelines provide an exemption from submitting bids for wind installations of less than 6 MW and less than 1 MW for other renewable energy technologies. The proposed text would lower these thresholds to 400 kW from 2022 and to only 200 kW from 2026. **For renewable electricity, the threshold should be 500 kW, and for biomethane 3 MWth.**

k) Discrimination between companies according to their size

In paragraph 119, the **increase in the aid intensity for small or medium energy efficiency service providers (ESCos) represents a distortion of competition** at the expense of large companies, as there is no evidence that they suffer from a competitive disadvantage. This increased aid intensity would have negative impacts on the structure of service providers, for instance by favouring consultancy firms over operational ESCos. It would be **more appropriate to link the aid intensity to the project holder**, as in paragraphs 128 and 398, **or to increase the aid intensity for projects covered by an energy performance contract**, as in paragraph 213 (for eco-innovation).

l) Differentiation of renewable energies

In paragraph 107 on aids replacing less polluting forms of energy, **fossil fuels and biomass should be distinguished**. Indeed, **biomass in any form cannot be considered a non-renewable energy source**. Aids for biomass should be encouraged as it can significantly contribute to the decarbonisation of the heating sector provided that the biomass in question meets the sustainability criteria of the revised Renewable Energy Directive (RED).

m) Energy efficiency in the industry

Paragraph 115 of Section 4.2.2 according to which aid may be granted for improving the energy efficiency of buildings, should be replicated in category 4.1, regarding the category of aid intended for the reduction and elimination of GHG emissions, with the appropriate adaptations, to cover industrial sites. In particular, **energy efficiency projects supported by long-term performance guarantees (energy performance contracting) should be clearly included** in this Section as an essential tool for decarbonising the industry.

n) Need for enhanced support to circular economy

In Section 4.1., companies support the possibility of broadening the aid scheme to allow the participation of other sectors in this regime, technologies or projects that can all contribute to decarbonisation. It is important to **extend the scope of support to cover an entire sector or all companies facing the same environmental challenge (such as the waste management sector as a whole),** to ensure a level playing field and minimise distortions of competition.

Over the years, waste-to-energy plants have proven to be effective in reducing CO2 emissions, through the decarbonisation of electricity and heating systems, the improvement of energy efficiency, the use of local and renewable sources and the reduction of waste disposal in landfills. Given the new objectives of the European Green Deal, the forthcoming Guidelines should continue to support these installations' upgrades - in heat use and energy efficiency through district heating and process steam projects. This is particularly true in the Member States that still heavily rely on landfills and where an integrated waste management system has not been developed yet.

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About AFEP

Since 1982, AFEP brings together large companies operating in France. The Association, based in Paris and Brussels, aims to foster a business-friendly environment and to present the company members' vision to French public authorities, European institutions and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is Afep's core priority. AFEP has more than 110 members. More than 8 million people are employed by AFEP companies and their annual combined turnover amounts to €2,600 billion.

AFEP is involved in the drafting of cross-sectoral legislation, at French and European level, in the following areas: economy, taxation, company law and corporate governance, corporate finance and financial markets, competition, intellectual property and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility and trade.

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