BUNDESVERBAND Bioenergie e.V.

Feedback on the draft

Climate, Energy and Environmental State aid Guidelines (CEEAG)

The Bundesverband Bioenergie e.V. (BBE) is the umbrella organisation of the German bioenergy sector. In the BBE, market players are organised along the entire value chain of the biogenic electricity, heat and fuel market: from biomass cultivation and its provision, to machinery and plant construction, to the planning and operation of bioenergy plants in the various sectors.

General comments:

Effective protection of the climate requires a rapidly effective reduction in greenhouse gas emissions and compensation for unavoidable residual emissions by removing greenhouse gases (GHG) from the atmosphere. With the Green Deal, the Climate Law and the "Fit for 55" package, the EU is setting the framework for climate protection. In this context, the draft for the new Climate, Energy and Environmental State aid Guidelines (CEEAG) provides important guard rails for the member states for the expansion of renewable energies and climate protection measures. It is therefore of great importance that the CEEAG are aligned with the climate and energy targets of the Climate Law and the "Fit for 55" package and give the member states the necessary leeway to achieve the EU targets. The transition to GHG neutrality will require an unprecedented and, above all, short-term willingness to invest and financial mobilisation. State aid will play a key role in stimulating the needed innovation and enabling the large-scale investments in climate-friendly technologies that are required.

Compared to 1990, EU GHG emissions have already fallen by 24% by 2019.[1] In the remaining years until 2030, a GHG reduction of around 30% must therefore be achieved in order to reach the EU target of a 55% reduction in GHG compared to 1990. This highlights the enormous short-term challenge facing the EU. The bioenergy sector is convinced that it can make a decisive contribution to achieving the climate targets, especially in areas where other climate protection technologies reach their limits. Bioenergy plants not only provide secure and controllable power in the electricity and heating sectors, but also accounted for the vast majority of GHG reductions in Germany in 2020, with 88% of renewable energy in transport. In 2020, bioenergy[2] in Germany supplied 20% of the renewable gross electricity generation and 85% of the renewable final energy consumption in the heating and cooling sector respectively. Bioenergy thus provides an indispensable contribution to the overall necessary massive expansion of renewable energies in all application areas. The net GHG

[1] https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Greenhouse_gas_emission_statistics_-_emission_inventories

[2] Including sewage and landfill gas as well as biogenic waste

savings from the use of bioenergy in Germany thus amounted to around 71 million t CO2 in 2020, which corresponds to about one tenth of Germany's total emissions for the year.[3]

In the BBE's view, the following points must be taken into account in the revision of the KUEBLL:

1) The revised CEEAG must be coherent with the legal texts in the climate and energy sector. On the one hand, this concerns the question of the period of validity, which is not yet clear from the draft, and for which the BBE considers a synchronisation with the EU's climate and energy policy goals until 2030 to be meaningful in terms of content and economically appropriate, however. Secondly, the CEEAG must not introduce an arbitrary new category of renewable energies, for example "renewable energy sources without air pollution". From BBE's point of view, this approach would be absolutely unacceptable and would undermine coherence with existing EU law [RED II - (EU) 2018/2001]. In addition, the plants meet the legal requirements for air pollution control as a prerequisite for the operating licence.
2) Sustainable biofuels with low risk of indirect land use change (iLUC) should be recognised and supported as one of the most important existing climate protection measures. The co-products "protein feed", especially from EU cultivation ("farm-to-fork" strategy), must also be taken into account. The associated overall contribution to reducing greenhouse gas emissions and to reducing land pressure in third countries must be maintained and also recognised.
3) Operational support for depreciated bioenergy plants should be allowed, as it guarantees the use of renewable energy and minimises the likelihood of reversion to the use of fossil fuels.
4) The pace of decarbonisation of the heat sector needs to be increased, as also indicated in the draft revision of RED II [(EU) 2018/2001]. CEEAG should incentivise investments in renewable heat solutions, including district heating and cogeneration.
5) To achieve GHG neutrality, innovation and investment in negative emission technologies such as bioenergy with carbon capture and storage is crucial. To ensure that negative emission technologies are available at the required scale by mid-century, their development and ramp-up should be supported. The CEEAG should include concrete instruments for this.

The BBE recommends the amendment of the draft of the CEEAG in the following points:

Reference	**Amendment**	**Justification**
30	In certain exceptional cases aid can have an incentive effect even for projects which started before the aid application. In particular, aid is considered to have an incentive effect in the following situations: (…) c) operating aid granted to existing installations for environmentally friendly production where there is no ‘start of works’ because there is no significant new	The "incentive effect" should include a counter-analysis with the aim that the absence of operating aid would lead to the choice of less environmentally friendly solutions. The existing EEAG framework provides for the possibility for Member States to grant operating aid to existing biomass installations after depreciation (EEAG section 3.3.2.3). It should be ensured that, in justified cases, aid can be granted to depreciated bioenergy installations to ensure their continued operation. The need

[3] https://www.erneuerbare-energien.de/EE/Navigation/DE/Service/Erneuerbare_Energien_in_Zahlen/Zeitreihen/zeitreihen.html und https://www.umweltbundesamt.de/sites/default/files/medien/2546/dokumente/2021_03_10_trendtabellen_thg_nach_sektoren_v1.0.xlsx

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	investment. In these cases, the incentive effect can be demonstrated by a change to operate the installation in an environmentally friendly way rather than an alternative cheaper mode of operation that is less environmentally friendly **or based on the counterfactual analysis, that lack of such aid would result in less environmentally friendly choices of operators**.	for this arises from the continuously accruing operating and biomass costs and the risk of energy supply reverting to fossil fuels. The BBE recommends that existing, depreciated plants can also continue to receive operating aid, provided that their operators can prove that these plants could be replaced by less environmentally friendly plants without support.
Nr. 77	Indirect land-use change (ILUC) occurs when the cultivation of crops for biofuels, bioliquids and biomass fuels displaces production of crops for food and feed purposes, **as specified in delegated act (EU) 2019/807**. Such additional demand increases the pressure on land and can lead to the extension of agricultural land into areas with high-carbon stock, such as forests, wetlands and peatland, **where no national legislation is in place or its enforcement is weak,** causing additional greenhouse gas emissions. This is why Directive (EU) 2018/2001 limits food and feed crops-based biofuels, bioliquids and biomass fuels **and (EU) 2019/807 provides safeguards**. The Commission considers that certain aid measures can aggravate indirect negative externalities. The Commission will therefore, in principle, consider that support for biofuels, bioliquids, biogas and biomass fuels exceeding the caps defining their eligibility for the calculation of the gross final consumption of energy from renewable sources in the Member State concerned in accordance with Article 26 of that Directive and **exceeding the respective thresholds in (EU) 2019/807**, do not produce positive effects which outweigh the negative effects of the measure. ~~**Furthermore, the Commission will verify whether Member States took into account in the design of their support mechanisms the need to avoid**~~	In order to avoid possible negative effects that might be accompanied with the production of biofuels, bioliquids and biomass of crops for food and feed the commission has defined biofuels associated with a high risk of indirect land use change (iLUC). According to Art. 26 (2) of regulation EU 2018/2001 the eligibility will be phased out by 31. December 2030 the latest, starting in 1.1.2024. Therefore, delegated regulation (EU) 2019/807 specifies which biofuels can be associated with a high-risk of iLUC by defining certain thresholds. All other biofuels have to be considered low-risk of iLUC. In addition, it should be noted that as a result of the reforms of the CAP and in regulatory law (see also "Farm-to-Fork" strategy), the requirements for environmentally sound and sustainable biomass cultivation in the sense of good professional practice are increasing in the EU. Thus it cannot be concluded that their expansion produces negative effects that outweigh the positive effects and the draft should be amended such that only biofuels with a high iLUC risk according to delegated regulation (EU) 2019/807 should be considered to produce negative impacts that outweigh the positive impacts, as supported by recent findings.[4] Furthermore, it must be taken into account that the more stringent requirements for

[4] biokraftstoffverband.de/index.php/stellungnahmen.html?file=tl_files/download/Stellungnahmen_und_Studien/21-04-20_sGU_Greenhouse%20gas%20savings%20from%20biofuels%20in%20Germany_DEF.pdf

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	~~**distortions on the raw material markets from biomass support, in particular for forest biomass.**~~	sustainability certification under RED II must also be applied in third countries. The bioenergy sector sees this instrument as an important and viable tool for creating a level playing field in terms of fair competition, especially as EU agriculture will have to face one-sided production cost-distorting and thus competition-distorting conditions in the future as a result of the reform of the CAP, the farm-to-fork and biodiversity strategy. In addition, the requirement to avoid distortions on the commodity markets should be deleted, as market events are too complex to be able to draw single-factor conclusions on the promotion of bioenergy. The requirement bears the risk that simplified and wrong conclusions are drawn to the detriment of bioenergy or that support programmes are set up too hesitantly despite the massive investments required. In addition, already existing support must not be jeopardised.
92 (b) (iii)	Exceptions from the requirement to allocate aid and determine the aid level through a competitive bidding process can be justified where evidence, including that gathered in the public consultation, is provided that one of the following applies: (…) (iii) for heat generation and gas production technologies – projects below 400kW ~~**installed**~~ **average** capacity.	The new CEEAG should not use “installed electric capacity” as unit but “average electric capacity” due to the fact, that in Germany biogas plants have to install at least 2,5 - 5 times the electric capacity in order to be able to produce electricity flexibly. The average capacity however reflects the real energy production per year.
96	~~**When aid is granted in the form of operating aid or a tax reduction to support biofuels, bioliquids or biogas, and there is a quota or supply obligation which effectively sets a separate market price for biofuels, the aid amount must not exceed the difference between their production costs and that market price. Production costs may include a reasonable profit.**~~	The overcompensation assessment for biofuels is not envisaged for other subsidy categories, such as e-mobility, and thus puts biofuels at a disadvantage. In the sense of equal treatment, a negative unique selling point must not be created here. It should be noted in particular that the amount of biofuel to be taxed in the agricultural and forestry sector is limited in any case, measured against total consumption. Due to the tax concession introduced in Germany in the 2000s, it must be pointed out that the

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		overcompensation assessment is disproportionate with regard to the different production conditions of the respective biofuel producers. This concerns not only the compilation of market data as a basis for calculation, but also the resulting lack of planning certainty for investments and amortisation periods. The overcompensation assessment must therefore also be dropped for biofuels.
98	The subsidy per tonne of CO2 equivalent emissions avoided must be estimated for each beneficiary or reference project, and the assumptions and methodology for that calculation provided. To the extent possible, this should seek to identify the net emissions reduction from the activity, taking into account life-cycle emissions created or reduced**, applied to all renewable energy sources**. To enable a comparison between the costs of different environmental protection measures, the methodology should usually be similar for all measures promoted by a Member State	In order to create a benchmark for the costs of different technologies, an objective and comprehensive assessment of the life-cycle emissions of all renewable energies should be applied, which not only includes emissions during energy use but also includes upstream emissions.
107	To avoid undermining the objective of the measure or other Union environmental protection objectives, incentives must not be provided for the generation of energy that would displace less polluting forms of energy. For example, where cogeneration based on non-renewable sources is supported, ~~**or where biomass is supported**~~, they must not receive incentives to generate electricity or heat at times when this would mean ~~**zero air pollution**~~ renewable energy sources would be curtailed.	The EU law based on the Renewable Energy Directive (EU) 2018/2001 provides a definition of renewable energy, namely: *"1. "energy from renewable sources" or "renewable energy" means energy from renewable non-fossil sources, namely wind, solar (solar thermal and solar photovoltaic) and geothermal energy, ambient energy, tide, wave and other ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas, and biogas;"* The renewable energy directive does not create any additional differentiation among renewable energies and logically does not derive any legal consequences from such differentiation. Additionally, biomass must comply with 'sustainability and the greenhouse gas emissions saving criteria' provided by Art. 29 of RED II to be qualified as a renewable source of energy. Thus, bioenergy is the only renewable source of

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		energy which fulfils additional criteria to being “renewable”, including a life cycle GHG saving assessment. Therefore, it is unacceptable that the CEEAG creates a new category of renewable energy, namely ‘zero air pollution renewable energy sources’ and de facto equalises biomass with non-renewable energy. This approach is not coherent with the existing EU law and discriminates against the use of bioenergy. Furthermore, air emissions from bioenergy installations are regulated under appropriate EU legislation, e.g. the Ecodesign Regulation, the Medium Combustion Plant Directive and the Industrial Emissions Directive. Biomass plants must comply with these requirements, regardless of whether they receive state aid or not. BBE therefore demands the deletion of the references to biomass and “zero air emission renewables”.
161 / 162		BBE supports the long-term approach that fossil-based gaseous fuels in the transport sector should not be used anymore. However, for example aviation, long-distance shipping and heavy-duty road transport as well as agricultural and forestry machinery will partly still rely on non-fossil gases. Thus there is no reason to forbid the investment in new gas mobility in general. This should be designed in such a way that it only affects fossil gas technologies. The aim is to decarbonize the whole energy system as quickly as possible. Gas vehicles can also be used with sustainably produced biogas. The technology is there and readily available and helps to decarbonize the system as soon as possible. Even if gas infrastructure may be more useful for heavy or maritime transport it is vital to have a certain infrastructure in place. The approach

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		should leave room the use of biogas used as CNG or LNG.
318	Incentives must not be provided for generation of energy **from fossil fuels** that would displace less polluting forms of energy.	It is necessary to clarify, that the paragraph refers to fossil fuels and does not restrict renewable energies in one way or another.
Annex 1 **List of eligible sectors under Section 4.11**	**2059: Manufacture of other chemical products n.e.c.**	The CEEAG are to contribute to the expansion of renewable energies and the reduction of greenhouse gas emissions. Against this background, it is incomprehensible why the draft no longer includes NACE code 2059 in the list of sectors of Annex 1, which contains the economic sectors eligible for aid according to "*4.11 Aid in the form of reductions from electricity levies for energy-intensive users*". This is crucial so that companies can be exempted from the the German EEG allocation by means of the special equalisation scheme. NACE code 2059 "*Manufacture of other chemical products n.e.c.*" includes the production of biofuels. Currently and for the foreseeable future, these make the greatest contribution to climate-friendly mobility, which is why NACE code 2059 should be included in the list of Annex 1 for reasons of climate protection.

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