

Dutch response to the consultation on the revised Climate, Energy and Environmental Aid Guidelines (CEEAG)

This response reflects the views of the Dutch 'Interdepartementaal Staatssteun Overleg (hereafter: ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities. The ISO is chaired by the Ministry of Economic Affairs and Climate Policy. The Minister of Economic Affairs and Climate Policy is responsible for competition policy in the Netherlands.

This is the response on the consultation on the draft Climate, Energy and Environmental Aid Guidelines (hereafter: CEEAG). In this revision of the Guidelines on State aid for environmental protection and energy 2014-2020 (hereafter: EEAG) the European Commission proposes the enlargement of the scope of the Guidelines to new areas and all technologies that can deliver the European Green Deal and a flexibilization of compatibility rules. This wider scope is accompanied by safeguards to ensure that the aid is effectively directed where it is needed to improve environmental protection (including climate targets), is limited to what is needed to achieve the environmental goals and does not distort competition or the integrity of the internal market. The revision also aims at ensuring alignment and coherence with relevant EU legislation in the climate, environmental and energy fields, facilitating the phasing out of subsidies for fossil fuels, in particular those that are most polluting.

The Netherlands welcomes the revision and proposes some further improvements. The response entails the first formal reaction of the Netherlands to the draft CEEAG. The Netherlands looks forward to be involved in the further drafting of the CEEAG.

Introduction

Robust State aid control is essential for a level playing field to ensure a well-functioning competitive internal market. At the same time, intervention with State aid may be needed to address certain market failures and/ or to accomplish the goals of European Union interests.

In general, the Netherlands are satisfied with the current possibilities that the State aid rules offer to public entities with respect to environmental protection and energy-related purposes. There is a proper balance between, on the one hand, the assessment framework in the EEAG, which serves more market-distorting forms of State aid and, the General Block Exemption Regulation (hereafter: GBER), which allows certain State aid to be granted relatively easily and quickly – this balance between both instruments should be maintained.

A revision of these State aid rules is, however, deemed necessary to reflect the latest technological developments and to allow and to enable those investments that are essential for achieving the EU's environmental objectives with respect to climate change and the energy transition, towards achieving the Union's 2030 climate and circular economy targets and complying with the objective of EU climate neutrality by 2050. This in line with the goals of the Paris Agreement and, among others, the European Green Deal. Therefore, the Netherlands welcomes the initiative by the European Commission to revise the State aid rules for environmental protection and energy.

This corresponds with the Dutch climate and circular economy ambitions towards a climate-neutral and circular economy by 2050, as formulated in the Dutch Climate

Agreement¹ and associated strategies. Realizing these national and European ambitions will require significant public investments in the coming years. For the Netherlands, it is particularly important in the review that there are sufficient possibilities to facilitate the transition to climate neutrality, instead of only being able to support the end goal. This means, among other things, that that the CEEAG should enable:

- the necessary support for technologies that are crucial for long term climate neutrality, especially technologies for electrification and hydrogen production. The development of the hydrogen market could be hindered by demanding a focus on direct, short-term emission reduction effects or the use of exclusively renewable energy. State aid should also be possible when contributing to the long-term emission effects, e.g. over the entire lifespan of supported projects (see comments on section 4.1 (hydrogen)).;
- sufficient possibilities to grant State aid when environmental protection is not achieved through own activities of an undertaking, but in the value chain. The Netherlands is particularly looking for such possibilities in the CEEAG on this point for CC(U)S, circular economy and biobased feedstocks (see comments on sections 4.1 (CC(U)S and environmental benefits in the value chain), 4.1.3, 4.1.4 and 4.4).

General comments on the rationale of the revision (Chapters 1 and 2 draft CEEAG)

The Netherlands generally welcomes the enlargement of the scope of the draft CEEAG to new areas and all technologies that can contribute to achieving the climate ambitions. It is important that the revised State aid rules are fit for the future. That this is realized through, among other things, flexibility by means of a technological-neutral approach to decarbonization is positive. In some cases however, it should be possible to support specific technologies based upon clear criteria for such techniques (see also comments on section 4.1). It is also helpful that State aid can be granted at higher aid amounts and intensities.

The Netherlands endorses that the wider scope of the draft CEEAG is accompanied by safeguards. For the Netherlands it is important that State aid is proportional, is not crowding-out private investments, and that competitive instruments such as tenders are used where this is efficient. Of great importance, however, is that the safeguards do not limit the wider scope for granting State aid in such a way that State aid for activities which are important for realizing the environmental objectives cannot be approved. In order to realize the climate targets, the CEEAG should, in our view, give more leeway in certain areas with respect to the safeguards (see comments on Chapter 3) .

The revision also aims at ensuring alignment and coherence with relevant EU legislation and policies in the environmental and energy fields. The Netherlands are of the opinion that the CEEAG should be supportive of EU policy and legislation in a way that the State aid rules do not create an unnecessary obstacle. That the European Commission strives for coherence with EU policy and legislation can be supported, while taking into account the different objectives and timing of the instruments.

The Netherlands takes note that in parallel the GBER is also undergoing a revision of the provisions complementing those set out in the draft CEEAG. The Netherlands would have preferred to have assessed the GBER revision directly in combination with the draft CEEAG. Like the draft CEEAG the revision of the GBER should be supportive of the EU

¹ Climate Agreement, 2019 (English version):
<https://www.government.nl/documents/reports/2019/06/28/climate-agreement>

targets on climate and energy for 2030 and beyond. The Netherlands sees an important role to play for the GBER in this respect and would welcome significant more possibilities for granting aid on the basis of this instrument. Widening the scope of the GBER to areas like clean mobility infrastructure and biodiversity and by revisiting the provisions on energy efficiency in buildings and on resource efficiency to make them more operational can be endorsed. The Netherlands invites the European Commission to draft a new GBER category specifically for hydrogen. It would also be helpful if the rules in the GBER entail more flexibility regarding eligible costs, aid intensities and maximum State aid amounts.

Comments on the general compatibility criteria (Chapter 3 draft CEEAG)

Positive condition: the aid must facilitate the development of an economic activity (draft CEEAG 3.1)

Paragraph 20 states that on the basis of Article 107(3), paragraph (c), of the Treaty, the European Commission may consider compatible with the internal market State aid to facilitate the development of certain economic activities within the Union (positive condition), where such aid does not adversely affect trading conditions to an extent contrary to the common interest (negative condition). Can the European Commission clarify in more detail that, on the basis of this Article, the phasing out of certain activities can indeed be included in the CEEAG? Please see our more detailed questions under section 4.12.

Negative condition: the aid measure must not unduly affect trading conditions to an extent contrary to the common interest (draft CEEAG 3.2)

With respect to the competitive bidding process (paragraph 48 and further), it is important for the Member States to maintain sufficient flexibility. There should also be sufficient possibilities for non-market based support mechanisms (for example first-come, first served subsidy schemes) when other safeguards are in place to prevent overcompensation, such as using a funding gap approach and limiting the WACC that is used. This is specifically but not solely important for newer and more innovative technologies as the cheapest projects in the short run do not necessarily provide the desired sustainable outcomes in the long run. The CEEAG should cater for this. Moreover, it is not desirable that when using a competitive bidding process, the European Commission determines the way the selection criteria should be handled. The selection criteria should reflect the policy objectives of the scheme, and other criteria, such as the quality of the project and the degree of confidence in the actual realization of the project could be equally or more important. The Netherlands suggests the European Commission amends this provision and leaves it up to the Member States to show what criteria they wish to use and to substantiate how the criteria ensure a good contribution to environmental protection.

A new threshold for publication of State aid on a State aid website is introduced in paragraph 56 of the draft CEEAG. This threshold is lowered from EUR 500,000 to EUR 100,000. The Netherlands considers that this new threshold would lead to a disproportionate administrative burden for Member States and considers this highly undesirable. Therefore, the Netherlands requests the European Commission to maintain the threshold of EUR 500,000 as this threshold will ensure adequate transparency.

Weighing the positive effects of the aid against the negative effects on competition and trade (draft CEEAG 3.3)

In the balancing exercise of weighing the positive effects of State aid against the negative effects on competition and trade, the European Commission will pay particular attention to Regulation (EU) 2020/852 (paragraph 69). According to the Netherlands the

development of the EU taxonomy as a means to provide guidance for private investors assessing which investments are future proof (i.e. in line with the EU climate goals) can be supported. The EU taxonomy could be one of the factors that helps the European Commission in defining positive environmental gains. However, as the EU taxonomy is still being developed, applying it as a decisive factor with regard to State aid is difficult to support as this stage.

Paragraph 71 explains as a general rule that measures that involve support to the most polluting fossil fuels are unlikely to create positive environmental effects and often have important negative effects because they can increase the negative environmental externalities in the market. The same applies for measures involving new investments in natural gas, unless it is demonstrated that the investments are compatible with the EU's 2030 climate target and the 2050 climate neutrality target. In the draft CEEAG it is indicated that for such measures a positive conclusion to the balancing test is unlikely and therefore State aid unlikely to be possible. The Netherlands welcomes the statement on the phasing out the support of fossil fuels. This makes the renewable fuel policy more effective. In line with the proposal by the European Commission in draft CEEAG, the Netherlands considers the use of natural gas as necessary during the energy transition period developing to fully renewable alternatives.

Comments on specific categories of aid (Chapter 4 draft CEEAG)

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

Rationale and scope (draft CEEAG 4.1.1 and 4.1.2)

With section 4.1 the scope of the draft CEEAG is extended to all technologies that reduce greenhouse gases and improve energy efficiency. This technological-neutral approach to decarbonization is positive. However, it should remain possible to support specific technologies, such as hydrogen, based on clear criteria for such techniques. Because relevant EU legislation is still under revision, such as the Renewable Energy Directive II, it would also be helpful if the European Commission could provide guidance at a later stage how section 4.1 should be applied for various specific technologies.

The Netherlands is also positive about the fact that the European Commission states that support for renewable energy should be fully covered by this section, and specific renewable schemes continue to be possible within these rules.

The Netherlands supports the possibility to grant State aid for the full net additional costs of more environmentally friendly investments and activities in reducing greenhouse gas emissions and/or improving energy efficiency. This also applies to the variety of forms that are possible. The Netherlands welcomes the introduction of carbon contracts for difference (hereafter: CCFD) as an aid instrument, since this allows a stable investment environment for hard to abate sectors in a cost-effective manner through tendering. CCFD will kick-start the industrial transition of aided sectors considering their long investment cycles, being the anchor for the development of infrastructure, and the need for green basic materials to create green markets. The Netherlands welcomes a CCFD design that seeks to maintain a level playing field, only if technologies are considered that will benefit the 2050 goal of net zero emissions and that takes competition with recycling into account.

Furthermore, electrification represents an important transition route to a more sustainable industry; upscaling of associated technologies necessitates adequate and timely support. Requirements for electrification technologies to exclusively use renewable or low carbon electricity seem too restrictive in the draft CEEAG as the electricity mix is

not fully renewable during the transition period. Furthermore, they do not account for the functioning of (renewable) electricity markets and grid systems, and the long-term decarbonization perspective based on the ETS system which ensures long term emissions reductions on a system level.

Hydrogen

Aid for hydrogen is covered by section 4.1. Given the importance of hydrogen for the energy transition, clear tailor made conditions for granting aid are needed here. Renewable hydrogen will play a crucial role in future energy systems. While our future hydrogen market should be primarily based on renewable sources, the Netherlands believes that in the current transition phase scaling up of hydrogen should be supported in which low-carbon hydrogen (including blue hydrogen) plays a crucial role for the energy transition. Both blue hydrogen (from natural gas with carbon capture) and low-carbon electricity-based hydrogen (from low-carbon electricity through electrolysis) allow for cost-effective CO₂-reduction and the development of the European hydrogen market. These techniques promote the necessary economies of scale, crucial for the further development of fully renewable hydrogen production. The State aid rules should facilitate support for these technologies as long as they are in line with our common climate targets, while substantially increasing flexible demand for renewable electricity.

The Netherlands believes that without both forms of low-carbon hydrogen, companies will not be able to scale up electrolysis technology and adapt their production processes and infrastructure in time for NL and the EU to meet our 2030 and 2050 climate goals; only allowing State aid for exclusively renewable hydrogen will slow down technological development and limit the opportunities for companies looking to decarbonize their production processes with hydrogen, such as aviation, steel making and the chemical industry.

In light of the national and common European hydrogen ambitions the Netherlands welcomes the extension of the scope of the draft CEEAG. The possibility to design competitive tenders with a more limited eligibility for demonstration projects (paragraph 83 sub b) and innovative technologies with long-term substantial decarbonization potential (paragraph 83 sub d)) should provide sufficient room for the necessary public support for hydrogen projects the coming years.

However, the draft CEEAG remains inconclusive on methodologies for calculating greenhouse gas emissions reductions of electrolysis projects. Therefore, the Netherlands argues for an approach that calculates reductions as the expected cumulative effect of subsidized projects over their entire lifetime to be included in the CEEAG.

If the European Commission does not favor such an approach and will assess the environmental benefits of the marginal decisions of beneficiaries (for example an additional kilogram of hydrogen produced), such an approach should provide room for hydrogen projects to increase their hydrogen production if this results in additional production of renewable energy, for example through the use of power purchase agreements. A prerequisite for the Netherlands is that the relevant criteria of this approach, e.g. defining the concept of additionality, are workable for beneficiaries. At the time of writing this is still uncertain. Any chosen approach should, as stated above, not hinder hydrogen and electrification projects during the energy transition stage moving to fully renewable sources as long as it contributes to the climate and circular objectives set for 2030 and 2050.

A forward-looking approach based on additionality, making use of power purchase agreements in the case of grid-connected hydrogen projects, would create an incentive for Member States and companies alike to invest in additional renewable energy

production. According to the Netherlands the Commission should prevent an approach that limits the support for electrolysis projects to the historical characteristics of the energy mix (for example CO₂-intensity or share of renewables), because this would limit the possibilities for Member States to accelerate the development of renewable hydrogen production capacity in line with future renewable electricity deployment.

The extended scope for relatively new technologies, such as electrolysis, thus leads to some further questions, specifically with respect to paragraphs 98-100 (see also our comments on section 4.1.3 and 4.1.4). Those questions predominantly concern the methodologies eligible for verification of greenhouse gas emissions reductions. The Netherlands would be pleased to share their ideas about the possible methodologies concerning electrolysis projects in more detail if this would be helpful for achieving further clarity on this matter.

The Netherlands welcomes the confirmation in the draft CEEAG that investments in new or renovated energy infrastructure within the framework of a legal monopoly are not subject to State aid rules (paragraph 331), as it is specifically helpful for realizing the hydrogen infrastructure necessary for the climate neutrality targets in 2050.

Carbon Capture, Utilisation and Storage (CC(U)S)

The application of CCS and CCU is essential to achieve the greenhouse gas reduction targets in both the industrial and electricity production sectors. Therefore, it is important that there are sufficient possibilities for State aid for CC(US), as long as it contributes to the transition towards a climate neutral and circular economy (see also the comments on section 4.4.).

The Netherlands regards State aid for CC(U)S for waste incineration plants a transitional solution on the path to full emissions reduction. Furthermore, State aid for CC(U)S for waste incineration plants should not lead to lock-ins for recyclable waste incineration.

In order to reach the full potential of CC(U)S, international cooperation should be further enhanced by enabling State aid for CC(U)S projects with transport by other modalities than pipelines, such as ships and trucks. This is also in line with the new ETS-proposal.² The Netherlands request the European Commission to indicate explicitly in the CEEAG that this is also an option.

Furthermore, The Netherlands calls on the European Commission to include criteria that can be used to determine when CCU is actually regarded as CO₂ capture. For example, the application of CCU in chemistry can guarantee a recyclable carbon storage of more than 20 years, practically becoming CCS. The Netherlands would welcome clarity on this subject.

The European Commission specifically seeks comments on the inclusion of aid for direct removal of greenhouse gases from the air in the scope of the CEEAG. The Netherlands can endorse the inclusion of specific provisions in this regard due to the fact that this technology can contribute to the achievement of EU targets. In our view, CO₂ capture technologies also include capture of biogenic sources and direct air capture.

Some requirements under section 4.1.4 specifically apply to CCU/CCS and are discussed here.

² Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757.

In paragraph 105 the European Commission will take into account if dedicated infrastructure is intended for an individual user or group of users and whether the infrastructure will be connected to a wider network. The Netherlands would welcome clarification on this point. What would be the consequences if CCU/CCS projects are not available for third parties? In the view of the Netherlands, it would not be desirable if such projects are not allowed to be supported up-front, as long as lock-in situations are avoided.

Paragraph 108 states that aid measures will be verified to not stimulate or prolong the consumption of fossil-based fuels and energy. Does this also apply when using natural gas with CCS or for the production of hydrogen using CCS (so-called blue hydrogen)? How will the European Commission assess the Member States' explanation on this point? Pre-defined criteria would be welcome. In the opinion of the Netherlands using natural gas should be allowed when used with CCS or for blue hydrogen production during the transition phase, only if it contributes to climate and circular economy objectives and does not create lock-in situations.

In paragraph 110 Member States are required to explain how to avoid a lock-in of gas-fired energy generation or production equipment; for example by including binding commitments to implement decarbonisation technologies such as CC(U)S. We understand that this entails the possibility to use CC(U)S in gas-fired installations only in situations where lock ins can be avoided, which is welcomed by the Netherlands.

Environmental benefits in the value chain

For the Netherlands it is very important that possibilities for aid measures that go beyond direct reduction of emissions at a specific company but have substantial environmental benefits in the value chain are included in the CEEAG. In that regard it is positive that the definition of environmental protection has been adapted (removal of 'own activities' from the definition in paragraph 18, sub 38). However, this should also be reflected more in the draft text itself. The draft CEEAG requires for example in paragraph 100 that State aid for the decarbonisation of industrial activities must reduce the emissions directly resulting from that industrial activity. Environmental protection is about remedying or preventing pollution or other damage. Paragraph 18, sub 51 defines a polluter as someone who directly or indirectly damages the environment or who creates conditions leading to such damage. The definition of pollution in paragraph 18, sub 52 refers to the direct or indirect introduction of substances into air water or land. Indirect damage can be caused by the so called scope 2 and 3 emissions. The obligation in paragraph 98 to base the CO₂ reduction estimates on a life cycle analysis seems to acknowledge this. To really support a cost-effective transition to climate neutrality and the circular economy, not only State aid for scope 1 emissions should be allowed, but also State aid for reducing emissions in the value chain, specifically the scope 3 emissions. Not doing so would be a missed opportunity in light of the climate challenges we are facing.

A few examples of projects in which the environmental benefit is achieved by another company than the one requesting support for environmental measures:

- An undertaking capturing CO₂ with the purpose of utilization by another undertaking, invests in tangible assets to capture the CO₂, but does not realize a direct environmental effect by its own activities. The environmental effect of the State aid enabled activity would be realized by the process change of another undertaking that uses the captured CO₂, for example greenhouses using the captured CO₂ instead of producing their own CO₂ with natural gas, or

undertakings using the captured CO₂ as a raw material in products (mineralization), capturing the CO₂ in the product for a long period of time.³

- Investments in production processes to replace fossil by biobased feedstock (as long as the biological nutrients are being preserved; feedstocks for chemical processes, not for energy purposes). As a result, no primary fossil feedstock enters the production process, which decreases greenhouse gas emissions in the production chain (in this case incineration emissions), but not at the level of the undertaking's own activities where CO₂ emissions from the chimney remain the same. Incineration of biomass at the end of life of the product brings CO₂ back in the system that was captured by the plant shortly before whereas incineration of fossil feedstocks brings "new" CO₂ in the atmosphere. The same holds for investments in synthesizing synthetic aircraft fuels from CO₂ from the air and renewable electricity.
- Investments in technologies and installations facilitating the import of hydrogen, insofar it does not fall under definition of energy infrastructure. These imports require specific installations for unloading and storing large amounts of energy carriers and often technologies to convert carriers better suited for long haul transport into carriers better suited for direct usage (for example ammonia and hydrogen respectively). Investing in such installations is necessary to achieve environmental gains in the production processes of end users, but realize no environmental gains within the borders of the project.

Minimalisation of distortions and avoidance of undue negative effects (draft CEEAG 4.1.3 and 4.1.4)

Paragraph 80 states that Member States should ensure that aid remains 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 is granted, to ensure that aid remains necessary for each eligible category of beneficiary. Where aid is no longer required for a category of beneficiary, this category should be removed before further aid is granted. The Netherlands requests the European Commission to introduce a threshold so that such requirements do not have to apply in all cases. For smaller aid schemes with a limited duration, such requirements appear disproportionate. The same applies to paragraph 84 on the basis of which Member States should keep eligibility rules and any rules related thereto under review.

The draft CEEAG introduces in paragraph 85 and further the requirement of a public consultation on the main features of the envisaged scheme in order to enhance transparency and to ensure that additional flexibility is well calibrated and incentivize stakeholders' participation in the design of support measures. According to the Netherlands, a Member State may consider public consultation desirable in certain cases and this may also be encouraged by the European Commission. However, it is up to the Member States themselves to determine when and how this takes place. In the view of the Netherlands the European Commission should differentiate between an aid scheme and an ad hoc aid measure. In any case, it is important that the EU Member States have sufficient leeway to organize this process as long as certain proportional preconditions are met.

Furthermore, competitive bidding is the default mechanism for awarding aid and setting the level of aid to reduce overcompensation and market distortions (paragraph 89). In principle using a competitive bidding process can be supported by The Netherlands. However, it is up to the Member States to decide what way of granting the budget is

³ See for example N208/2010, SA.48816, SA.52174 and SA.52663.

most appropriate and that other ways than competitive bidding should be allowed as long as there are good reasons to do so. When a competitive procedure is chosen then it is important that the Member States have sufficient flexibility in implementing this. Please take note of our comments on the general compatibility criteria of chapter 3 of the draft CEEAG.

The Netherlands welcomes that paragraph 96 makes clear that it is allowed to support biofuels, bioliquids or biogas where the blending obligation is not sufficient. Could the European Commission explicitly clarify whether this will additionally count for the production of renewable fuels of non-biological origin as well? In addition, the production and use of biofuels, bioliquids or biogas should only be supported under strict sustainability criteria.

The draft CEEAG also introduces in paragraph 98 the requirement to clearly estimate the cost of all supported project types to climate protection in terms of subsidy per tonne of greenhouse gas emission reduction achieved (€/tCO₂ equivalent avoided) to ensure that aid is necessary and to discourage aid for less cost effective investments in terms of decarbonisation. There is, however, no requirement to use this parameter in the project-selection. Could the European Commission explain what this data will be used for? Moreover, such estimate only could be effective when all Member States use the same method and assumptions. As long as this is not the case, this requirement is not considered very useful, whereas it increases the administrative burden significantly.

Paragraph 99 states that to deliver positive environmental effects in relation to decarbonization, the aid must not merely displace the emissions from one sector to another and must deliver overall greenhouse gas emissions reductions. Short and long term interactions with any other relevant policies or measures, including ETS, should be considered. For the Netherlands it is important that this condition should not block the necessary upscaling of electrification, as long as it contributes to the objectives for a climate-neutral and circular economy by 2030 and 2050.

The draft CEEAG requires in paragraph 100 that State aid for the decarbonisation of industrial activities must reduce the emissions directly resulting from that industrial activity. This seems to leave limited room for projects where investments lead to identifiable emission savings elsewhere in the supply chain and where there are financial risks on both sides. For the Netherlands it is very important that possibilities for such aid measures that go beyond direct reduction of emissions at a specific company, are included in the CEEAG (see also the comments on section 4.1 and 4.4). In this respect, can the European Commission clarify what is meant by industrial activities? Does this also concern power producers and waste incinerators (for the latter category, lock-in effects stemming from CC(U)S should, however, be avoided)?

In a similar vein, the draft CEEAG requires in paragraph 100 that State aid for improvements of the energy efficiency of industrial activities must improve energy efficiency of the beneficiaries' activities and not elsewhere in the supply chain, while the definition of energy efficiency (paragraph 18, sub 32) does not exclude efficiency elsewhere in the value chain. According to the Netherlands this condition is too strict, because this would mean that energy efficiency measures cannot be conducted by, for example, energy service companies. Energy performance contracting is mentioned in section 4.2 (paragraphs 119 and 124), this should also be added to other sections, such as 4.1.

Furthermore, more clarification is needed with respect to paragraph 103, specifically what is meant by 'more environmentally friendly operating decisions'. In most electrification cases, for example, there are long-term environmental gains, but in the

short run it could increase the use of fossil power involving more greenhouse gas emissions. How does the European Commission define 'environmentally friendly operating decisions' and what frame of reference should be used?

Finally, more clarity regarding financial or operational lease would be welcome. Despite the fact that this option is only mentioned in section 4.3, the Netherlands assumes that based on the definition of environmental protection and without restrictions given in the eligible costs leasing could also be supported under section 4.1. This should apply in cases both when the lessee has a financial lease contract and when the lessee has an operational lease contract.

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

The Netherlands endorses a specific section in the draft CEEAG for the improvement of the energy and environmental performance of buildings. A refurbished and improved EU building stock will help pave the way to a decarbonized and clean energy system, considering the sector's large energy demand. It is positive that the draft CEEAG expands the possibilities for granting State aid to existing buildings.

The Netherlands endorses the decreasing possibilities for State aid for energy equipment of buildings using fossil fuels. The Netherlands appreciates the possibilities for funding by means of an energy efficiency or renewable energy fund or other financial intermediaries instead of directly to owner-occupants. Due notice has to be taken for remaining concerns on State aid for owners' associations with a mix of rental/owner-occupied homes: the Netherlands urges the European Commission to make it easier and using a simplification for undertakings as part of such an owners' association in order to accelerate renovation of buildings with mixed ownership. Other concerns are related to: the considerable higher amounts of aid necessary for monumental buildings compared to other existing buildings; (too) limited possibilities for energy-cooperations which are started by citizens of a district or neighbourhood; and (too) limited possibilities for support in situations where energy supply is shared between industry and the built environment (heat grid, energy storage). Furthermore, energy generation in/near buildings is not only important for public buildings but for other non-residential buildings as well. Moreover, aquathermal storage is often realized outside the building or even outside the property.

An obligation to realize a minimum reduction of 20% of the primary energy demand is welcomed given the urgency to take robust measures and as it would stimulate taking big steps. The Netherlands would consider such a threshold in an equivalent article in the GBER not necessary as every (small) measure to be taken is important. The Netherlands would instead welcome more possibilities for a higher aid percentage if a measure will have a higher energy reduction result. Related to buildings and construction sites the limitation of nitrogen deposits is very important.

The Netherlands would welcome more possibilities for logistic optimization, digitalization and industrialized/prefab and circular building.

Furthermore, the Netherlands has the following more specific comments.

In paragraph 15 sub b the wording 'of buildings' as used in the title of section 4.2 (paragraph 114) should also be used instead of 'in buildings', because the improvement could also be on the outside of buildings.

The CEEAG could entail a definition of 'building' that could be used for different purposes, such as industry, factories, dwellings, offices, public buildings, schools, hospitals and other real estate.

As to the formulation of 'reduction of the primary energy demand', the Netherlands would also urge to mention measures for a reduction of primary energy use (such as lighting).

Paragraph 116 sub b is limited to on-site renewable energy installations. The Netherlands would welcome if this would also include on-site storage of heat or cold from district heating or cooling systems based on renewable or energy efficient sources (e.g. geothermal or residual heat). Besides, an addition of storage of renewable electricity when brought to the building by a distribution network would be very welcome. These practices will be very instrumental in matching supply and demand - one of the major challenges of the energy transition. With regard to paragraph 116 sub b, storage of renewable energy would also be welcome as a measure eligible for support without a direct link to energy efficiency.

Paragraph 116 and 117 leave room for discussion on the question if there are enough possibilities to stimulate the generation of energy at schools, hospitals and other social real estate or public buildings for their own use or delivery to the energy supplier. The Netherlands would welcome such possibilities for two reasons. Firstly, there are types of buildings with specific energy requirements and/or high energy demand, e.g. hospitals or certain sports facilities. Secondly, there is potential for social real estate or public buildings with energy generation to contribute to the local energy transition. In light of the aforementioned, the Netherlands requests the Commission to make sections 4.1 and 4.10 more suitable for other buildings than industry or factories alone.

Paragraph 126 limits the basis aid intensity at 30% of the eligible costs. Paragraph 130 gives room to a higher state intensity to be proven by a funding gap calculation method as described in paragraphs 47, 50, and 51. In the opinion of the Netherlands, the basic aid intensity seems to be too low for the specific projects involved and should be preferably increased up to 45%. In return, paragraph 130 could be deleted.

With regard to the upcoming, important, revision of the GBER, the Netherlands would like to make the following comments:

Private property

There is no State aid involved when direct subsidies are given to private owners. However, State aid may be involved in other cases. Article 39 GBER should for those cases be tailored for financing constructions with third parties, next to the possibilities on the basis of the SGEI rules.

For loans for owners with insufficient repayment capacity, the condition of Article 39 GBER that requires 75% private money in the fund is considered too restrictive, especially in the case of a fund that provides loans to owners with reduced repayment capacity. Therefore, the Netherlands suggests the possibility for a higher percentage of public money in the fund, an adjustment of the interest rate for the repayment by the owners and the allowance of any remission. A specific amendment to Article 39, paragraph 8, sub c, GBER on this point has been suggested by the Netherlands in an earlier stage.

Rental housing

The rental housing sector can be divided into rental properties owned by private landlords and rental properties owned by housing corporations: some homes fall under social housing SGEI and another part under the non-SGEI social housing.

The general impression of the Netherlands is that both the CEEAG and the GBER (Article 36 GBER) have sufficient possibilities for financial support measures, whereby

sustainability can be achieved at a maximum support percentage that is seen as proportional.

The notification threshold of EUR 15 million (Article 4, paragraph 1, sub s GBER) is considered too low for the built environment. A larger environmental benefit can be achieved (CO₂ reduction, energy saving) if entire complexes with homes (terraced houses, semi-detached, flats) are made sustainable at the same time. In view of the large size of the stock that will have to be renovated in the Netherlands the next 30 years (7 million homes and buildings), upscaling of the approach is necessary (bundling supply and demand / unburdening).

Therefore, the Netherlands proposes to introduce a higher threshold (e.g. EUR 25 million) per undertaking per project or a specific threshold for the rental sector in this subsection of the GBER. Besides, the Netherlands proposes to amend the SGEI rules by deleting the cap of EUR 15 million per undertaking for SGEI's focused on renovation of buildings in the rental market (social housing and the rental market in general).

Furthermore, the Renovation Wave acknowledges that split incentives between owners and tenants are among the strongest barriers of making individual decisions to start a sustainable renovation, balancing expected benefits and costs. In case of multi-ownership buildings this is a particular issue. Multi-ownership buildings, which contain different owners that are responsible for collective parts of the building(s), are often united in an association of owners (in Dutch: Vereniging van Eigenaren, VvE). Every member of this association is an owner of an apartment right (which can relate to a unit of living space such as part of a building, a house, a parking lot) and the association is responsible for the management and maintenance of common spaces (such as the roof and the elevators).

Owners of multi-ownership buildings are legally obliged to establish such an association, by means of a notarial deed and registration. Such a building can consist out of two up to hundreds of apartments owned by owner-occupiers. Multi-ownership buildings with mixed ownership consist of owner-occupiers and owners who rent out the apartment. And sometimes a multi-ownership building also contains shops that are private property or rented out on a commercial basis but which share common spaces.

It is difficult to take into account the State aid rules for renovation of mixed multi-ownership buildings. Renovation can be delayed when other than owner-occupiers are part of the association, because of the applicability of the State aid rules for at least a part of the owners. It is usually too high of administrative burden for associations to clarify and manage subsidy applications. Even asking information for the use of the De minimis Regulation or some sort of declaration in the application of Article 38 GBER through the association causes delays in the application for subsidies stimulating the renovation of the building or even withholds the association to start renovation of the common spaces.

Therefore, The Netherlands proposes the following. As far as there is not a situation of a local activity, the renovation of buildings is State aid pro rata of the ownership of the undertaking within the association if it is more than 50% of ownership within the association. In that case, a specific Article is needed in the GBER for larger amounts than EUR 25 million per undertaking per project.

In addition, the Netherlands would also like to request the European Commission to examine whether Article 45 GBER (Investment aid for remediation of contaminated sites) can be expanded to include aid for the remediation of asbestos in the built environment. This could also be explicitly reflected in section 4.6 of the CEEAG.

Section 4.3: Aid for clean mobility

The Netherlands endorses a specific section in the draft CEEAG for the transition to clean mobility. From the perspective of renewable (bio)fuels for transport, the Netherlands can in general agree with the draft text. It is positive that the European Commission has succeeded in aligning the draft text with the Renewable Energy Directive II (Directive 2018/2001/EU). It is important to adjust this once the revision of this Directive (the RED III) is adopted, for example by referring to it, insofar this contributes to the climate objectives set by the EU and by the Netherlands itself.

In the definition of a clean transport vehicle ((paragraph 18, sub 20(e)), the definitions on sea and coastal vessels are based on type of fuel rather than emissions, unlike the other vehicles. Therewith, they do not include the possibility that the vessel captures CO₂ on board and unloads this captured CO₂ in the harbor towards permanent storage. Maritime organizations are however considering such options. Therefore, The Netherlands would like to suggest the following amendment under e)

"(i) has emissions that are 25% lower than the IMO EEDI through a hybrid or dual fuel engine deriving at least 25% of its energy from zero direct (tailpipe) CO₂ emission fuels or plug-in power for its normal operation at sea and in ports or by capturing and storing the CO₂ emissions."

Aid for the acquisition and leasing of clean transport vehicles and clean service equipment and for the retrofitting of vehicles (draft CEEAG 4.3.1)

In paragraph 143 it is not clear what is meant with 'capacity'. Does this refer to how many people/ freight can be transported? And could the European Commission explain in more detail which Union standards are referred to in this paragraph?

In paragraph 161 and 162, the European Commission states that CNG and LNG vehicles may not create long-term lock-in effects, which the Netherlands endorses. To prevent the level playing field to be distorted more clarification on this point would, however, be welcomed. This also applies to the 20 % threshold.

Aid for the deployment of recharging or refueling infrastructure (draft CEEAG 4.3.2)

The Netherlands endorses a specific section in the draft CEEAG for aid for the deployment of recharging or refueling infrastructure. It is positive that it is possible to finance projects up to the full funding gap.

The section could, in our view, be improved by some cross-references. In paragraph 168 reference can be made to the review of Directive 2014/94/EU and in paragraph 179 a reference to the construction of circular stations (section 4.4) would be welcomed.

With respect to paragraphs 169 and 170 it is important that aid may also be granted for grid upgrades (see paragraph 177). In addition, it is desirable to make explicit whether medium voltage ring expansion falls under this, as this is one of the biggest barriers.

Paragraph 185 states that aid for the deployment or upgrade of NCG and LNG refueling infrastructure may also be regarded as not creating long-term lock-in effects where the Member State commits to ensure that the CNG and LNG is blended with biogas or renewable gaseous transport fuels of non-biological origin (minimum 20%). Could the Commission explain what the 20% is based on?

With respect to paragraph 187, more clarification would be welcome on how a maximum percentage of the budget for the measure that can be allocated to one single undertaking can be determined?

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

The Netherlands welcomes the possibilities in the draft CEEAG for supporting the transition towards a circular economy. It is important that the focus is no longer only on recycling, but also on circular design, reparability and reusability of materials. Also, for the transition towards a circular economy it is important that waste is considered a resource. Specifically this should enable that businesses not only receive support for the processing of waste produced by other businesses, but that aid should include the processing of all resources produced by a company itself, including those resources currently considered as waste.

A high level of system integration enables more efficient energy and resource (re-(use) and subsequently represents an essential focus of climate policies in the coming decades. However, when aiming for an optimal system integration, environmental gains (such as CO₂ reduction) of public interventions are likely to increasingly materialize elsewhere in the production chain than at the level of the direct beneficiary of the State aid. To properly reflect today's climate challenges the Netherlands would urge the European Commission to broaden the scope of this paragraph.

According to paragraph 192 sub a, ii aid under section 4.2 may be granted for the replacement of primary raw materials or feedstock with secondary (re-used or recycled) raw materials or feedstock. Biobased feedstock can also substantially contribute to emission reduction and, in the long term, resource efficiency. The Netherlands considers it is necessary to also allow aid for investments in replacing fossil feedstocks by sustainable biobased feedstocks. Moreover, it is necessary to allow State aid, under proper conditions, when the environmental gains arise not directly at the level of the State aid beneficiary, but elsewhere in the value chain (see also our comments on sections 4.1, 4.1.3 and 4.1.4)).

This is, for example, the case when the (potential) beneficiary of the State aid invests in remedying or preventing damage to physical surroundings or natural resources (for example sourcing more sustainable palm oil) or using natural resources more efficiently (for example reusing waste), where the environmental gain is realized at other undertakings or consumers not benefitting directly from the State aid. Paragraph 216, states that aid may also cover operating costs where it relates to the separate collection and sorting of waste or other products, materials or substances. It is unclear why operating aid would not be possible for the other activities that are within the scope of this paragraph (paragraph 192 sub a, b and c). More possibilities for operating aid would be welcomed.

Finally, according to paragraph 12 sub a (and footnote 9) the CEEAG does not apply to the design and manufacturing of environmentally friendly products, machines or means of transport with the view to operating with fewer natural resources and the reusability of material. Besides replacing fossil energy, industrial CO₂ emission, specifically in the chemical sector, can also be reduced by replacing primary fossil feedstocks. Therefore, the Netherlands is of the opinion that State aid should be enabled for undertakings producing biobased and environmentally friendly products, for instance to help them change their business model and invest in more environmentally friendly production processes. Such State aid can in the end accelerate the circular economy to a larger extent than when leaving the choice solely to consumers.

Section 4.5: Pollution reduction: aid for the prevention or the reduction of pollution other than from greenhouse gases

The Netherlands welcomes this specific section for the prevention or reduction of pollution and emissions other than greenhouse gas. Insofar as there is State aid involved, it is important that there are ample opportunities to grant State aid for nitrogen reduction. With regard to nitrogen reduction, a basic support intensity of 40% of the eligible costs is considered too low. The Netherlands will further assess the extent to which this section is workable in practice for the Netherlands and would be happy to share our views bilaterally.

Paragraph 226 states that the aid must primarily target the prevention or reduction of pollution directly linked to the beneficiary's own activities. The Netherlands thinks it is necessary to not only consider environmental gains directly at the level of the State aid beneficiary, but also allow, under proper conditions, State aid when the environmental benefit is (mainly) achieved elsewhere. Please see our comments on sections 4.1, 4.1.3 4.1.4 and section 4.4.

Section 4.6: Rehabilitation and biodiversity: aid for the remediation of contaminated sites, for the rehabilitation of natural habitats and ecosystems and for biodiversity and nature-based solutions

The Netherlands welcomes this specific section for rehabilitation and biodiversity. Insofar as there is State aid involved, it is important that the scope is extended to cover not only aid for decontamination, but also State aid for the rehabilitation of nature and ecosystems, and for the protection and restoration of biodiversity. The conditions included in the draft text appear to be workable for the Netherlands.

Section 4.7: Tax reductions : aid in the form of reductions in taxes or parafiscal levies

The Netherlands considers it positive that EU Member States may grant tax reductions that provide a positive incentive for environmentally friendly measures. It is important for the Netherlands that there is sufficient attention for possible risks that may unduly distort competition on the EU internal market. It is important for The Netherlands that the CEEAG continues to be coherent with the (proposal for the new) Energy Taxation Directive (ETD). The timing of the revision of the ETD should however not raise obstacles for the provision of state aid under the CEEAG. Finally, it is important to ensure that the options for introducing tax reductions are proportional to the new, broader options for direct levies on electricity.

Section 4.8: Aid for the security of electricity supplies

The Netherlands has no comments on the draft text of section 4.8 as the draft CEEAG largely preserve the rules from the EEAG, incorporating the main aspects of the sectoral legislation and codifying case practice.

Section 4.9: Aid for energy infrastructure

For legal certainty, it is positive that the European Commission clarifies in which circumstances the State aid rules do not apply to public investments in energy infrastructure. In case there is State aid involved, it is positive that the European Commission has extended the definition of energy infrastructure to include hydrogen, renewable gases and heat/steam/cold. However, the Netherlands still has questions about the precise conditions that apply with regard to the conversion of the gas infrastructure to hydrogen and about the scope of the options for heat/steam/cooling. More clarity would be welcomed on

Furthermore, the definition on infrastructure for district heating (paragraph 18, sub 35 e) does not consider the possibility that the cooling and heating is generated using

renewable cooling and electricity, nor does it seem to cover storage. Storage, specifically aquifer thermal energy storage, which stores cooling in winter for use in summer, should be added to the definition. Also the use of waste cooling from, for example, LNG processing units should be covered by the definition.

The storage of energy is not part of energy infrastructure, but could – under certain conditions- be supported based on other sections of the CEEAG. The Netherlands acknowledges that flexibility and energy storage are essential for the energy transition, and recognizes that the market is in need of public investments to support the further development and integration. That is why a clear set of rules is needed. Therefore, the Netherlands asks the European Commission to include storage of energy, including thermal energy storage, in the energy infrastructure section with clear requirements.

Section 4.10: Aid for district heating and cooling

For legal certainty, it is positive that the European Commission clarifies the conditions under which public investments for district heating and cooling are regarded as State aid. If the financing qualifies as State aid, clear and tailor made conditions are needed. It is necessary to pay attention to the various sources of renewable heat and residual heat. The Netherlands is examining the extent to which the draft CEEAG in practice will be able to facilitate such necessary investments.

The Netherlands would like the Commission to confirm that aid for district heating and cooling covers all possibilities to stimulate both the industries making technical arrangements to make residual heat available and the transportation of residual heat by heating companies to end users, including business to business applications, as long as this contributes to the objectives of climate neutrality and the circular economy by 2030 and 2050, which includes that lock-ins of waste incineration plants are avoided. The Netherlands supports the line of the European Commission that aid for decarbonisation may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market, or where it locks in certain technologies, hampering the wider development of a market for and the use of cleaner solutions.

Aid should both cover the stimulation of heat sources and heat infrastructure and the CEEAG should give room for granting investment as well as exploitation subsidies.

With regard to paragraph 348 (similar to paragraph 110) the Netherlands recalls it is important that given the uncertainty regarding the use of biomass (as a peak supply) for district heating, it might turn out to be more sustainable and favorable for public support to construct a gas-fired peak supply during the transition phase. The transition from natural gas to renewable alternatives is safeguarded by the sustainability norm in national legislation that is imposed on district heating companies. Could the European Commission confirm that such an approach is in line with the draft CEEAG?

Section 4.11: Aid in the form of reductions from electricity levies for energy-intensive users (EIU's)

According to the Netherlands it is important that the definitions for the energy intensive sector should be fully in line with (the revision of) the Energy Taxation Directive (ETD). The timing of the revision of the ETD should however not raise obstacles for the provision of state aid under the CEEAG. Moreover, the possibilities in section 4.11 to mitigate negative effects caused by electricity levies should be in line with the possibilities mentioned in sections 4.7.1 and 4.7.2 in order to maintain a level playing field on the EU internal market. As stated, the minimum tax tariffs put down in the Energy Taxation Directive, should be respected.

Section 4.12: Aid for coal, peat and oil shale closure

The phasing out of coal, peat and shale oil can make a significant contribution to the environmental, circular and climate objectives of the EU. However, the same is true for other outdated resources and waste incineration (in view of a fully circular economy by 2050). The Netherlands has some general remarks regarding the inclusion of a specific category for aid for coal, peat and oil shale closure.

Facilitating an economic activity

The draft CEEAG states that measures have to facilitate the development of certain economic activities or areas. In paragraph 372 the Commission states that aid for coal, peat and oil shale closure can create space for the development of other, likely environmentally friendly, activities in order to offset the reduction in the power generation capacity caused by the early closure. Can the European Commission clarify whether these arguments lead to a general presumption that aid for coal, peat and oil shale closure fulfills this condition? Or would Member States still need to provide arguments to prove that this is the case?

In relation to this point, can the European Commission clarify whether and in which circumstances it would take the view that aid for closure of coal, peat and oil shale closure qualify as stranded costs linked to investments in assets that offer no prospects of long-term viability and therefore do not facilitate any economic activities? In analogy to the approach in the 2001 Commission Communication relating to the methodology for analyzing State aid linked to stranded costs arising from Directive 96/92/EC, such stranded costs might not be compatible with Article 107(3)(c) TFEU.

Existence of State aid in case of compensation for damages by an Act of the State

In paragraph 374 the European Commission states that compensation for lost profits decided by a national court in line with rules of domestic law applicable to any litigant in a similar situation is likely, because of its nature, to fall outside the scope of State aid control. The same rule does, according to the European Commission, not apply for compensation decided on by the Member State authorities or agreed with the undertakings.

The Netherlands does not agree with this statement and is of the opinion that a measure that financially compensates for damages resulting from an act of the State that it is obligated to compensate does not constitute a selective advantage for the beneficiary. Following the judgment of the Court of Justice of the EU in the joined cases C-106 to C-120/87 (Ast ris) it is considered that compensation for damages incurred as a result of State action does not confer an advantage on the recipients of the compensation:

"(...) that State aid, that is to say measures of the public authorities favouring certain undertakings or certain products, is fundamentally different in its legal nature from damages which the competent national authorities may be ordered to pay to individuals in compensation for the damage they have caused to those individuals."

Such an obligation can stem directly from Article 1 of Protocol No.1 of the European Convention on Human Rights (ECHR) and Article 17 of the Charter of Human Right of the EU if a legislative measure interferes with the right to property. Such an obligation is not only present following a decision by a national court. Interference with the right to property is only allowed if it is prescribed by law, is in the public interest, and is necessary in a democratic society. This last condition means that the measure must strike a fair balance between the demands of the general interest of the community and

the requirements of the individual's fundamental rights. In this regard it is, among other things, relevant whether measures are foreseeable. If a legislative measure interferes with the right to property, for instance because it forbids the production of electricity by a coal plant from a certain date, such measure might, depending on the factual circumstances, require compensation of damages to strike a fair balance. If in such a case the right to compensation would not be included in the legislative measure, this measure would infringe on the right to property. Of course, the measure must ensure that no overcompensation takes place. If this is ensured, it is clear that no advantage is conferred on the recipient of the compensation even though there is no decision by a national court.

The Netherlands would welcome adjustments of paragraph 374 in line with aforementioned case law and legal obligations.

Compatibility of aid for coal, peat and oil shale closure

If a measure qualifies as State aid, as with financing for voluntary and permanent termination of the use of coal for the production of energy by a single coal plant, it is important that the revised State aid rules allow such aid with clear and tailor-made rules. Therefore, the Netherlands endorses this section in the draft CEEAG, with the exception of paragraph 374.

Other type of plants and installations

Towards achieving a climate-neutral and circular economy by 2050, besides coal fired power plants, compensation for closure or transformation of other types of installations based on fossil fuels is desirable. The Netherlands is of the opinion that the compensation for closure or transformation of waste incineration plants and other types of installations based on fossil fuels or other outdated resources may be necessary to accelerate the decarbonization of our society. Installations such as oil refineries need to be closed or transformed (to biofuel plants) as we get closer to the 2050 goal of climate neutrality. Could the European Commission clarify that State aid will be possible for the compensation of closure or transformation of other types of fossil fuel based installations and waste incineration plants?

Section 4.13: Aid for studies or consultancy services on environmental protection and energy matters

It is positive that the draft CEEAG makes it possible that State aid can also be provided for studies or consultancy services directly linked to projects or activities covered by the draft CEEAG, irrespective of whether this is followed by an investment. Since there are also possibilities for granting State aid for studies on the basis of GBER and the RDI Guidelines, a clear demarcation is important.

Comments on applicability (Chapter 7 draft CEEAG)

On the basis of paragraph 414 of the draft text Member States must amend, where necessary, their existing environmental protection and energy aid schemes in order to bring them into line with the CEEAG no later than 31 December 2023. Due to the more general nature of the categories of aid and the possibilities to justify deviations from the general conditions of Chapter 3, it is on the basis of the draft text not very clear which amendments would be necessary for already approved State aid measures. For the purpose of taking these appropriate measures, it would therefore be helpful if the European Commission could explicitly mention the provisions to which approved State aid measures should be adapted.