AK EUROPA

Position Paper
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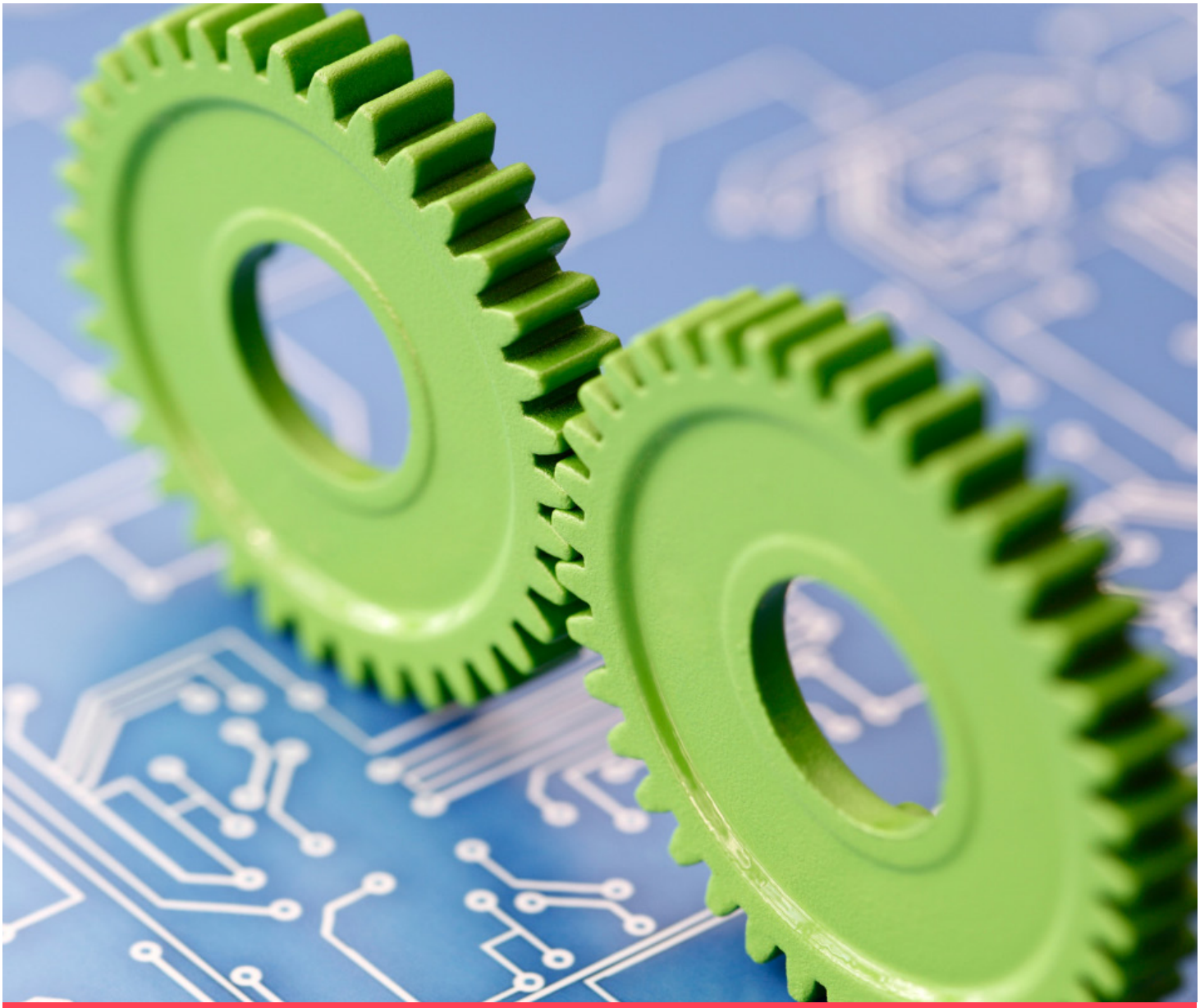
Green Deal



Consultation on the Clean Industrial State Aid Framework (CISAF)

Executive Summary

Summarised assessment

The Clean Industrial State Aid Framework (CISAF) should allow for a more flexible interpretation of Art. 107 TFEU, adapted in the context of economic and environmental challenges. It seeks to serve as an instrument for defending and strengthening the EU's global economic position. AK therefore welcomes this initiative with the aim of reducing strategic dependencies if it is possible to simultaneously preserve jobs by securing locations and create new employment in the EU by promoting technology and innovation. CISAF can become a useful instrument for these ambitions if it also succeeds in eliminating competition for subsidies between EU Member States and enabling a harmonised European funding policy.

From AK's point of view, the following key points are central:

- CISAF is an important building block for a European industrial strategy in which the promotion of European added value should be given due consideration.

- Instead of the scattergun approach, however, the focus must be on start-up investments with three key conditionalities:

- Specific share of value added in Europe;

- Contributing to energy efficiency, avoiding deadweight effects and ensuring recycling.

- Strengthening the structural policy and social components, in particular requirements for protecting locations and jobs.

- Establishing a country key to set upper limits for national subsidies in line with GDP and to ensure a certain proportionality of national subsidies – "rule against going it alone".

- Establishing compatibility between the three main EU legal acts on state aid, namely the General Block Exemption Regulation (GBER), the 2022 Climate, Energy and Environmental Aid Guidelines (CEEAG, OJ C 80) and the present CISAF.

AK's Position

With regards to the content of the proposal:

The European Commission carried out a consultation on the CISAF (Clean Industrial State Aid Framework). It is an economic policy instrument for implementing the "Clean Industrial Deal: A joint roadmap for competitiveness and decarbonisation". CISAF is to be in force until 31.12.2030. It sets out how Member States can design state aid measures to support the objectives of the deal. It builds on the experience with the "Temporary Crisis and Transition Framework (TCTF)" or replaces it. The draft CISAF contains provisions for the following types of aid measures:

- Aid schemes to accelerate the rollout of renewable energy and energy storage with simplified tendering procedures. In addition, state aid for non-fossil flexibility and capacity mechanisms will be facilitated.
- Aid schemes to accelerate industrial decarbonisation, including subsidies for specific innovation fund projects.
- Aid to ensure sufficient generation capacity for clean technologies (currently defined as: batteries, solar panels, wind turbines, heat pumps, electrolysers, and equipment for carbon capture usage and storage). Member States can provide higher amounts of aid to match the level of subsidies offered in third countries for a given project and prevent such investments from being withdrawn from Europe.
- Aid to reduce the risks of private investment in the above-mentioned areas.

The planned measures in detail

Section 4.1 – Roll-out of renewable energies

- Point 31 and point 33 – Expansion of renewable energies

Expansion is an important goal, but it must be carried out in harmony with the expansion of the necessary networks. This is not mentioned in the present communication.

In order to guarantee a secure and affordable energy supply, all flexibility options must be used (including capacity mechanisms), as is rightly pointed out.

- Point 37 – Completion deadlines

With the exception of offshore wind power, hydropower plants, pumped storage and hydrogen production, projects are scheduled for completion within 36 months of approval.

In the opinion of AK, the completion deadlines for projects should be differentiated according to the energy source and should not generally be 36 months. This means that PV or storage systems can be completed in less time than wind turbines. In Austria, for example, the currently stipulated time for the completion of PV is between 6 and 12 months, depending on the size, compared to 36 months for wind power.

- Point 46 – point 50 – Direct price support

In principle, bilateral Contracts for Difference (CfDs) are appropriate to promote the expansion of new energy generation or re-power, but a contract duration of up to 25 years seems too long. This long contract period and thus long validity of the "strike price" can lead to false incentives - failure to exploit efficiency potentials in energy generation, excessively high margins for producers and high costs for taxpayers. The option for repayments can be agreed even after the funding agreement has expired in the event of overfunding is basically positive.

The administrative determination of the "strike price" for CfDs by the regulatory authority is associated with significant time and effort and uncertainty when it comes to defining a cost-efficient "strike price". In the view of AK, it should therefore be determined by means of invitations to tender.

The contract term for CfDs should be limited to 20 years.

Section 4.2. – Non-fossil flexibilities

- Point 54 – Aid for non-fossil flexibility support schemes

The promotion of new investments in non-fossil flexibilities (such as electricity storage, load shifting) must take place within the framework of a predefined budget and volume. From the point of view of AK, this provision is important in order to limit costs. Reference is made to Art. 19 of the Electricity Market Design Regulation (EMD), which stipulates that subsidies may not exceed what is necessary to achieve the national indicative target for non-fossil flexibility in a cost-effective manner.

In terms of cost efficiency, AK believes that particular attention must be paid to coordination between grid expansion, renewable expansion and the required capacities for energy sources (such as storage, load control, sector coupling, etc.), as is also prescribed in Art. 19e EMD (report by the Member States on the assessment of flexibility needs). In addition, AK believes that subsidies must be designed so as to create incentives for innovations in non-fossil flexibilities.

- Point 55 - Access to electricity exchanges and markets

In the opinion of AK, the goal of allowing all non-fossil flexibilities – battery storage, electric vehicles, smart heating systems, industrial flexibilities – to participate in the electricity market on an equal footing is critical. Enabling legal and technical access to the electricity exchanges for all non-fossil flexibilities is likely to be associated with high costs.

AK therefore proposes that access to the electricity exchanges or market access should initially only be made possible for non-fossil flexibilities with a positive cost-benefit analysis.

- Point 61 – Competitive tendering, conditionalities

The amount of aid is to be determined within the framework of competitive tendering procedures, but the ranking of bids is to be based solely on the price offered. This contradicts point 15, according to which Member States should also link the awarding of subsidies to (environmental or social) conditionalities or resilience targets.

From AK's point of view, other conditionalities should also be permitted in addition to the price criterion. Furthermore, reference should be made to compliance with the design principles for support schemes for non-fossil flexibilities in accordance with Art. 19 EMD.

- Point 63 – Penalty for non-compliance with the availability obligation

If flexibilities are available below a certain percentage (current proposal: 50%), the penalty should correspond to the aid paid out, regardless of which flexibility.

AK proposes that the level of penalty should be graduated, namely depending on the level of non-availability of flexibilities. This is because if the entire subsidy has to be repaid, there is a risk that available flexibilities will not be offered.

- Point 66 – Distribution of the costs for flexibility requirements

From the point of view of AK, it is desirable in principle that the costs are borne by the polluter. However, attention must be paid to whether a corresponding adjustment in behaviour – in this case the shift in electricity consumption – is all that easy in practice. Incentives must also be proportionate. In the specific proposal, AK doubts whether these two conditions are met. In the area of household consumers, the load profile is heavily dependent on the respective daily routine and the technical possibilities. While prosumers and consumers with controllable consumption devices (heat pumps or wallboxes) can shift their electricity consumption more easily, this is often not so simple for households in urban areas. The load curve here is largely determined by external factors such as the workplace and the associated working hours.

The situation is similar in various branches of industry which often have very heterogeneous load shifting options. In any case, AK believes that the Commission's current proposal threatens inflexible consumers with disproportionately high costs and considerable economic, social and regional policy consequences. In addition, the question arises as to whether costs for security of supply (such as flexibility potential in this case) can really be allocated so easily in such a complex system. Finally, AK also raises the question of whether the funding mechanism itself should be the subject of an EU aid framework.

AK is of the opinion that a middle way must be found in terms of funding that sits between the polluter-pays-principle and economic policy acceptability. A national design could better address the individual circumstances in the respective Member States. This would make it easier to find a funding mechanism that ensures the most targeted incentives possible with a high level of acceptance. In the view of AK, the design should therefore be left to the Member States.

Section 4.3

- Point 68 – Aid for capacity mechanisms

In the opinion of AK, all measures must be taken to avoid lock-in effects so that fossil fuel power plants remain on the market for as short a time as possible and hidden subsidies are avoided. According to Art. 22 para. 4 of the Electricity Regulation, fossil-fuel power plants that emit a certain amount of emissions (more than 550 g CO2/kWh) may no longer participate in a capacity mechanism from 1 July 2025, and according to Art. 21 para. 3 of the Electricity Regulation, capacity mechanisms may not prevent decarbonisation. These decarbonisation targets must also be reflected in the aid that can be approved.

In the opinion of AK, the admissibility of operating aid for fossil fuel power plants should therefore be significantly reduced and not be permitted for longer than 5 years.

Furthermore, the de-rating factor, i.e. the correction factor that takes into account how reliably a technology can provide its capacity in practice, should be used more as an incentive for renewable, non-fossil capacity mechanisms and innovations. Annex I proposes a deviation factor of at least plus/minus 15% in relation to the flat-rate value for the technology. The capacity provider faces penalties for non-compliance.

AK suggests that instead of blanket de-rating factors for entire technologies (such as wind, PV, batteries, etc.), these should be defined in a more differentiated manner, such as according to location, grid connection, weather data, etc., in order to arrive at more realistic values. Fossil plants could – depending on emissions – receive reduced capacity values. This could give preference to lower-emission fossil-fuel power plants and provide an incentive for decarbonisation measures.

Capacities are allocated through tenders, with price being the only award criterion. This contradicts point 15, according to which Member States should also attach conditionalities to the awarding of funding – such as environmental, social or to strengthen resilience goals.

AK therefore proposes

- **Not only the price, but also criteria that support decarbonisation targets and innovation should be mandatory in tenders.**
- **The duration of the subsidies should be kept as short as possible to enable new market participants and technologies to enter the market and to prevent fossil fuel power plants being kept on the market for too long.**
- **The costs for the capacity mechanisms must be distributed according to the polluter-pays-principle. To this end, social criteria should also (be able to) be taken into account in the tendering process.**
- **Overall, care must be taken to ensure that the necessary capacity mechanisms are kept as low as possible through efficient grid expansion and the expansion of renewable energies.**

Section 5 – Aid for the implementation of the decarbonisation of industry

- Points 4, 8 and 77 – Technology neutrality

In the view of AK, the principle of technology neutrality contradicts both the intentions of the Clean Industrial Deal and the CISAF, which aim to achieve a carbon-neutral economy quickly based on clear strategic guidelines (see also point 30). This requires the principle of technological clarity. It is probably true that Member States are solely responsible for their energy mix. However, this does not mean that every energy source (nuclear, coal, gas) should be eligible for support under Art. 107 (2) and (3) TFEU. Rather, state aid is an essential instrument for steering investments towards renewable energies through technological clarity. This is contradicted by points 4 and 8, and in particular point 77.

The latter provides a special justification for giving preference to certain technologies. Therefore, if an aid framework is developed to promote renewable energy sources (excluding, for example, nuclear power), this requires special justification. In principle, AK is of the opinion that nuclear supply chains and technologies, including small modular reactors, are not worthy of funding, as they represent an outdated technology that cannot cope with climate change. Experience to date shows that nuclear energy is very expensive and economically inefficient when all relevant costs are taken into account, and is also associated with high health and safety risks. With the same resources, more renewable energies and storage technologies/flexibilities could be expanded faster, more sustainably and more cost-effectively. Fossil energy sources are only acceptable, if at all, as a short-term bridging solution (e.g. for storage capacities).

In the view of AK, at the very least, a reversed burden of proof should be introduced, according to which a special justification is required if subsidies are to be provided for fossil energy sources.

- Point 82 – Hydrogen production

The conditions for promoting investments in the use of renewable or low-emission hydrogen are set out here. If low-emission hydrogen is used, its share of renewable hydrogen should, according to the draft, be at least as high as the share of renewable electricity in the electricity mix of the Member State concerned. On the one hand, this is understandable: A quota system for renewable hydrogen is necessary to ensure that this is the fuel primarily used. This would mean that renewable hydrogen would now also be promoted on the demand side in addition to the already established supply-side funding instruments (hydrogen bank). On the other hand, the proposed design of the quota means that companies in countries with a high proportion of renewable electricity production are at a disadvantage. This is because they have to accept a comparatively more expensive hydrogen mix than those in countries with a lower proportion of renewable electricity production.

In the view of AK, the Commission should consider a different form of quota that does not penalise companies from countries with a high proportion of renewables.

- With regards to points 83 and 84 – Aid for CCS and CCU

Points 83 and 84 relate to measures for the capture and storage (CCS) and capture and utilisation (CCU) of CO2. With regards to CCU, it should be noted that this merely delays the emission of CO2 into the atmosphere (in the case of the conversion of CO2 into fuels, for example, by only a few weeks). At the same time, the conversion of CO2 into fuels or other energy sources requires significantly more electricity than can be obtained from the combustion of the same amount of energy sources. CCU is therefore a process in which large quantities of (renewable) electricity are used to merely delay greenhouse gas emissions. In view of this fact, carbon capture can only make a meaningful contribution to the energy transition from the point of view of energy storage.

AK is therefore of the opinion that references to CCU should be deleted from Chapter 5, this applies in particular to point 84 (a), clause (ii).

- Point 92 et seqq. – Repayment mechanism (claw back)

In-depth evidence of a funding gap is an important step in avoiding overfunding or deadweight effects. AK expressly welcomes the obligation for a repayment mechanism.

However, AK is critical of the proposed restriction of the repayment obligation (recital 121 lit. e) to 70% for aid for the supplementary promotion of specific innovation fund projects. In AK's view, this is difficult to reconcile with the principles of state aid law in accordance with Art. 107 TFEU and contradicts the principle of avoiding over-subsidisation.

AK proposes a repayment obligation of 100% of the (unexpected) surplus generated by the funded project.

- Points 15 and 130 – Conditionalities

AK considers it positive that social, sustainability and environmental conditions (recital 15) are made possible and that a location guarantee of 5 years (or 3 years for SMEs) is provided.

In the view of AK, European added value of, for example, 40% should also be permissible as a condition for granting aid; this would also be conceivable in the form of a supplement to the aid intensity.

- Points 134 to 139 – EU industrial policy

The stronger emphasis on industrial policy considerations, matching clauses and special justification for relocation to avoid state aid competition are also important cornerstones.

AK proposes linking the obligation to provide justification with the above-mentioned rule against going it alone.

Section 7 – Risk minimisation for private investors

The activation of private capital for investments in the decarbonisation of industry must be assessed in a differentiated manner and structured accordingly: In certain cases, (partial) risk assumption by the state may make sense. This applies, for example, to cases in which the risk is overestimated by private investors and there is therefore a market failure. One example of this is the electricity grid infrastructure: this is regulated due to its natural monopoly position and can therefore be seen as an extremely secure investment. Nevertheless, the return on capital is often significantly higher than the return on risk-free government bonds. Partial risk assumption by the state, for example in the form of guarantees, would make sense here. In areas that are more exposed to risk, risk assumption must be chosen carefully. State assumption of risk must not lead to profits being privatised and losses socialised, as this leads to market distortions. If risk is assumed by the state, it should therefore be noted that the lower risk is also reflected in a correspondingly lower return.

In the case of electricity grids, this means that regulatory authorities take into account the assumption of risk by the state in the form of lower regulatory capital cost compensation. Otherwise, this would result in unwanted monopoly returns for the network operators.

Excursus:

- Point 69 – Supplementary considerations, aid for ETS installations

Aid to reduce greenhouse gas emissions must help the Union achieve its climate targets. In the view of AK, there is no target for the promotion of ETS systems. This is because if the allowances released by the emission-reducing measure remain on the market, they will subsequently be used for emissions from another ETS installation.

Due to the shortage of ETS allowances since 2018 as part of the Market Stability Reserve (MSR) system, the price has risen significantly since 2019 and currently stands at around €65 per tonne. From 2023, the share of certificates in the market stability reserve (MSR) that exceeds 400 million certificates will lose its validity. In this way, most of the surplus certificates were deleted. The remaining certificates in the MSR, on the other hand, are not permanently withdrawn from the market, but rather only temporarily, and will be released for auction again if necessary.

If the volume of MSRs falls below 400 million certificates, they will no longer be automatically deleted. It is then possible that allowances that are no longer needed by an ETS installation after an investment in emission-reducing measures are used to cover emissions from another ETS installation. To prevent this, these certificates must be deleted.

AK considers it a matter of urgency that any subsidies for investments to reduce greenhouse gas emissions at ETS installations be linked to the condition that the corresponding number of allowances be permanently withdrawn from the market (deleted).

The question of whether there is a market failure should be defined within the meaning of point 34 of the guidelines on State aid for climate, environmental protection and energy.

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About us

The Austrian Federal Chamber of Labour (AK) is the legal body which represents the interests of approximately 4 million employees and consumers in Austria. It represents its members on all social, educational, economic and consumer policy-related issues at a national level and in Brussels at an EU level. In addition to this, the Federal Chamber is also part of the Austrian Social Partnership. AK is registered under number 23869471911-54 in the EU Transparency Register.

AK EUROPA office in Brussels, which was opened in 1991, is tasked with representation of the Chamber of Labour vis-à-vis European institutions and interest groups, the monitoring of EU activities and the transfer of knowledge from Brussels to Austria, as well as lobbying in Brussels for the expert opinions and positions of the Chamber of Labour that are developed together with the regional chambers.