

CLEAN INDUSTRIAL DEAL DRAFT STATE AID FRAMEWORK

COMMENTS BY CEMBUREAU

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CEMBUREAU POLICY ASKS ON THE CLEAN INDUSTRIAL DEAL STATE AID FRAMEWORK

- Allow for sector specific state aid schemes in competitive bidding to allow for different type of cost, abatement and amortization schemes to be considered.
- Need to address OPEX support in addition to CAPEX (not only in Contracts for Difference) to address high level of electricity prices and increased electricity demand when decarbonizing.
- Additional criteria to be imposed by Member States need to be proportionate and avoid complexity.
- Allow energy intensive industries to be eligible for investment support for ready-to-implement or advanced renewable energy projects – clarify cost allocation for flat consumption profiles in non-fossil flexibility schemes.
- Clarify state aid cumulation rules – Avoid funding gaps when combining EU and national aid – address different definition of eligible costs across funding schemes.
- Support gradual fuel-switching investments – Include investments in alternative fuels in self-generation of electricity.
- Allow flexibility on project timelines – 36 months period is unrealistically short – 48 months is more reasonable provided basic engineering and feasibility studies are completed and initial permits delivered at time of grant – Allow for 60 months from grant for delays due to circumstances out of the control of project developers
- Setting aid intensity against ETS benchmarks fails to set the investment incentive – replace with average emission at national level.
- Clarify rules on carbon capture investments and why transport, storage and use are not covered – 30% aid intensity for carbon capture investments against 50% for hydrogen is not justified from the principle of technology neutrality.
- No aid for production increase needs clarification; (i) to be assessed at group level? (ii) what if technology drives production increase through optimization?
- Ensure state aid criteria consider existing and future EU legislative developments (Renewables; ETS; Carbon removals; Industrial emissions)

CEMBUREAU, the European Cement Association, is pleased to set out its comments to the Draft Communication of the Commission for a Clean Industrial Deal Framework (hereinafter the “Draft Framework”).

I. Overall remarks: Competitiveness, Alignment & Role of State Aid

- ✓ State aid as enabling tool: we welcome the focus of the Draft Framework on the enabling role of state aid, notably section 5 (Aid to deploy industrial decarbonisation) and more specifically section 5.5. (aid schemes to support innovation projects) and 7 (which addresses de-risking). These sections demonstrate the Commission's understanding of the financing challenges faced

by capital-intensive investment projects and the willingness to deploy state aid as enabling tool for the execution of the Clean Industrial Deal while ensuring the integrity of the single market and fair competition.

- ✓ **Competitiveness:** the Clean Industrial Deal refers to rising economic tensions, slow economic growth in the EU and technological competition as factors that require immediate action in the areas of climate, competitiveness and economic resilience. CEMBUREAU fully underscores the sense of urgency and emphasizes the importance of addressing the root causes for the loss of competitiveness of European companies. Maintaining the competitiveness of European industry is not only a necessary precondition for setting us on the path to decarbonisation but it is in the first place essential for the day-to-day operations in a geopolitically unstable environment. Industry in general, including cement companies operating in Europe are confronted with energy price levels that are still 2 to 3 times higher than those applied in the US and other parts of the world. In addition, cement suffers from a sharp, in some Member States even dramatic, decline of construction markets (-4% for the Eurozone; -5.7% for France; -12.2% for Germany).

CEMBUREAU requests the development of state aid support to address the competitive disadvantages felt by European operators when assessing the impact of energy prices in their cost structure. A more targeted and profound revision of the Temporary Crisis State Aid Framework is warranted, considering barriers to access for this type of aid experienced under the existing Framework (e.g. 40% EBITDA reduction or negative EBITDA requirement). In addition, the Draft Framework should clearly include operational costs in its scope. The Clean Industrial Deal expressly recognizes the need to address OPEX support in relation to Contracts for Difference. CEMBUREAU reiterates its position that decarbonization of the cement industry will imply a significant increase in the operating costs precisely considering the high level of electricity prices in the EU.

- ✓ **Align state aid with other Clean Industrial Deal instruments:** The Draft Framework frequently refers to legislative acts in other policy areas (Renewables Energy; Emissions Trading; Carbon removals) whereby some of these references assume future policy initiatives (e.g., on residual emissions) or do not factor in potential impact of proposed legislation (e.g., on ETS benchmarks). As highlighted below under the comment on point 71 of the Draft Framework, the Industrial Emissions Directive requires a certain temperature level for cement kilns to be reached in start-up conditions. Achieving this temperature requires a limited use of fossil fuels and this needs to be considered when making state aid eligibility depend on a complete switch-off from fossil fuels.

II. Targeted comments on specific points in the Draft Framework

As stated above, CEMBUREAU is pleased to see the enabling character of the sections 5 and 7 of the Draft Framework. However, a good operation of the Draft Framework requires clarification on several points set out below:

- ✓ Member States can include additional conditions when designing state aid schemes (point 15): while we understand the rationale for this point, it is important to ensure proportionality of such requirements that should not create complexity and additional burdens in facilitating access to aid.

- ✓ Competitive bidding: the Draft Framework gives a prominent place to competitive bidding schemes. It further considers that the limitation of state aid schemes to energy intensive industries can be considered compatible and allows Member States to further narrow down the schemes if justified by objective considerations. CEMBUREAU refers to the criterion of EUR/tonne CO₂ reduced in the competitive bidding schemes. **CEMBUREAU pleads for sector-specific schemes** given the need to consider that abatement, cost and amortization curves can be substantially different between industries which can lead to unfair competitive conditions within a single competitive bidding exercise. The suggested criterion of EUR/tonne CO₂ reduced in the competitive bidding schemes (point 9(d) of the Draft Framework) risks to ignore such sector-specificity.
- ✓ Aid schemes for the roll-out of renewable energy need to allow for the acquisition of ready-to-implement or advanced renewable energy projects available on the transaction market. This would facilitate access and eligibility for energy-intensive industries that typically lack the experience and resources necessary to independently carry out investments in renewable energy sources.
- ✓ Aid for non-fossil flexibility support schemes: it would be useful to clarify, in point 61, that support for the development of demand-side flexibility should also be allowed in the form of loans and should not be strictly conditioned on the implementation of market mechanisms. It is unlikely that an energy-intensive company would invest, for example, EUR 20 million solely in exchange for remuneration for providing a service.
- ✓ Cost allocation for consumers that contribute to creating the flexibility need (point 66): CEMBUREAU requests clarification on how this would apply to a flat energy consumption profile which, in many cases, can not be altered because of technological constraints. These consumers would be faced with flexibility support costs which seem in contradiction with the objectives of the Clean Industrial Deal and the Action Plan for Affordable Energy.
- ✓ Clarify aid intensity and cumulation rules to ensure viable business case: point 29 of the Draft Framework, read in combination with the aid intensity provision in section 5.3.1, does not provide clarity on the level of cumulation allowed: it is questionable to what extent two aid regimes can cover two (completely?) different sets of identifiable eligible costs [point 29(a)]. Even if two regimes (EU and national or national-national) can be combined in relation to the same eligible costs [point 29(b)], the limitation to the highest support intensity does in most cases not provide a viable business case. A further complicating factor is that the notion of “eligible costs” varies between different funding instruments which, on its turn, has an impact on the highest support intensity. It is difficult to reconcile these cumulation and intensity provisions with the recognition for necessity and appropriateness of the aid referred to in points 18 and 19 of the Draft Framework.
- ✓ Ensure phased fossil fuel exit pathways remain eligible: under section 5, point 71 enumerates the type of activities to which the provisions of that section do not apply; point 71 (c) excludes “*state aid that incentivises new investments in industrial production, (...), based on the most polluting fossil fuels, such as coal, diesel, lignite, oil, peat and oil shale*” (our underlining). As a first remark, CEMBUREAU underlines the sector’s efforts to replace fossil fuels as source of thermal energy with alternative fuels, including, biomass, from a variety of waste streams. Today, 58% of the fuel needs are covered by alternative fuels (coming from 2% in 1990) and the ambition set out in the CEMBUREAU Roadmap is to reach 95% by 2050. In this context, while we fully subscribe to the objective of a gradual reduction of fossil fuel use, the provision should not be interpreted as hindering

eligibility for investments that gradually move away from fossil fuels. In addition, as mentioned above, a certain level of primary fossil fuels is, based on IED rules, required for the kiln start-up phase. The use of the words “*investments...based on the most polluting fuels*” leaves uncertainty as to the scope of the exclusion. Investments to further consolidate the use of alternative fuels in our sector are part of the investment strategies going forward but a full switch away fossil fuels cannot be achieved overnight. The concern expressed here is reinforced by feedback from cement project operators that, for some EU funding schemes (e.g. Joint Transition Fund), the European Commission requires a complete phase-out from fossil fuels by 2030 as an eligibility condition. This has posed serious challenges for the continued investment security for these projects. **CEMBUREAU suggests clarifying that the exclusion from the state aid framework applies to investments that have as their main objective to incentivize the most polluting fuels.**

- ✓ Self-production of energy (point 75 Draft Framework): CEMBUREAU welcomes this section as it responds into a plea from our industry to incentivize the development of low carbon energy sources on industrial sites. This is of particular relevance as electricity demand will increase substantially when decarbonizing the sector. In reference to the increased use of alternative fuels as one of the levers not only to reduce recourse to fossil fuels but also to reduce CO₂ emissions, CEMBUREAU **suggests adding investments in alternative fuel installations to the list.**
- ✓ Allow timeline flexibility for implementation: the timing and level of GHG reductions to be achieved, referred to in point 79, does leave no room for flexibility that is warranted in situations outside of the control of project partners. A period of 36 months is unrealistically short for a variety of reasons, including limited capacities in plant construction and timely availability of infrastructures (CCUS, H₂, electricity). In order to allow companies to create investment security and reach FID, **CEMBUREAU suggests allowing for a period of 48 months provided full feasibility studies and basic engineering are ready at the time of grant. As the construction phase of large projects typically takes around 36 months, initial permits to start construction must be in place at the time of granting. CEMBUREAU argues for a period of 60 months from grant if the applicant company can demonstrate that the required infrastructure will only be available for reasons outside of its control.**
- ✓ Avoid ETS benchmarks that undermine investment confidence (point 86 (b) Draft Framework): the necessity of the aid is presumed in case the national aid scheme imposes a 10% GHG emission reduction for installations at or below the level of the ETS benchmark or at least 40% for installations above that benchmark level (10% if the investment concerns a new installation). The main objective of the ETS benchmarks consists in incentivizing investments towards reaching the benchmark levels. That is why the benchmark is set at the level of the average of the 10% best performing plants. Using the benchmark level and the differentiated reduction percentages as a state aid eligibility criterion ignores that incentivizing element for 95% of the plants, especially for the (mostly non-breakthrough) investments that involve an incremental improvement that does not entail a 40% reduction at once. This point is further corroborated by the still ongoing revision of the ETS Benchmarks with uncertainty on future costs weighing on decarbonisation investment decisions (for the cement sector, the proposed benchmark extends from clinker to binder with a lack of clarity as to impact). **CEMBUREAU suggests to set the eligibility at the level of the average emissions of the plants at a national level.**

- ✓ Specific comments in relation to CCUS: at several places in the Draft Framework, there is a reference to CCUS. A few comments:
 - (i) Differentiated aid intensity (point 90): CEMBUREAU fails to see why an aid intensity of 30% is foreseen for breakthrough carbon capture investments while hydrogen related investments can benefit from 50% trade intensity. This violates the principle of technological neutrality.
 - (ii) Projects need to connect to a net-zero strategic storage project or a complete CCUS chain (point 83 Draft Framework): CEMBUREAU request a clarification on this point: if this requires secured access to an existing CCUS infrastructure system, this creates a chicken and egg problem as the investment in infrastructure will not happen unless there is a business case for a CO2 capture plant. The request to connect to a net-zero strategic CO2 storage project meets, in some of the ongoing cement projects, with a refusal to qualify as strategic because the storage site is situated in a non-EU country. The negative impact of such refusal does not only extend to state aid and financing in general but to other core elements covered by the Net Zero Industry Act such as faster permitting.
 - (iii) CO2 use (point 84): it is positive to see that the CO2 use does not only cover the CO2 chemically bound into a product but also includes CO2 used to produce synthetic fuels. However, there is no mention of other, non-permanent uses.
 - (iv) Why carbon capture only? no justification is provided as to why investments in carbon transport, storage and utilisation installations are not covered under either section 5.1 or section 5.5.
 - (v) Carbon capture investments need to ensure complementarity with other decarbonisation solutions to cater for residual greenhouse gas emissions from sectors that are technically unable to achieve full decarbonisation. as observed in the preliminary remarks, the design of secondary legislation in areas other than state aid will need to facilitate compliance with these conditions. The notion of what is “technically achievable” also merits clarification.

In concrete terms on both points above, the Clean Industrial Deal mentions the need for new measures to complement the roll-out of the EU’s long-standing objective to create a market for captured carbon. The implementation of the Industrial Carbon Management Strategy will build the business case for permanent carbon removals to compensate for residual emissions from hard to abate sectors but will also assess the use of captured carbon in a wider range of products. The degree to which this wider CO2 use will be allowed will determine the degree to which CCUS projects can be complemented. Therefore, coordination and alignment with other policy initiatives under the Clean Industrial Deal is essential.

- ✓ Aid should not finance an overall increase in production capacity of the beneficiary (point 103): it should be clarified that this principle does not apply to individual plants or, in the case of affiliated companies, to individual companies within the group, but to the group as a whole. The provision also does not touch upon the situation where the technology enables a production capacity increase due to optimization.

CEMBUREAU stands ready to support the Commission and Member States in making the Clean Industrial Deal State Aid Framework fit for purpose. The decisions taken now will determine whether Europe's energy-intensive industries can scale breakthrough technologies and maintain global competitiveness. We urge policymakers to ensure clarity, alignment, and sufficient flexibility in the final framework to turn ambition into investment at speed.

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