POSITION PAPER

Position Paper PP-40/19 – Revalidation of PP 40 dated February 2013

European Guidelines for Member States on State Aid in Compensation for Indirect Emission Costs

European guidelines for member States on state aid in compensation for indirect emission costs: out-sourced and in-sourced industrial gas production shall be treated equally in aid application

Background

On May 22, 2012, the European Commission adopted guidelines allowing for state aid to be granted in compensation for costs of indirect greenhouse gases emissions (SWD(2012) 130 final). This short paper addresses the treatment of the industrial gases sector with regard to when Member States apply for state aid in this context according to the Commission's guidelines.

The production of industrial gases is one of the most energy-intensive of industrial activities and provides solutions to Industry to decrease greenhouse gases emissions and increase economic efficiency. EIGA had proposed that the production of oxygen and nitrogen be considered eligible for state aid to ensure *both* the competitiveness of the European sectors that consume these products *and* the equality of treatment between in- and out-sourced production of these products.

Whilst the guidelines as adopted do not declare the production of oxygen and nitrogen to be considered eligible for aid, they do recognise the need for equal treatment between in- and out-sourced production.

Implementation

The guidelines set out in Annex II list several industrial sectors that consume large quantities of oxygen and nitrogen that <u>are</u> eligible for aid. Consequently, care needs to be taken by Member States when applying to the EU for aid to apply the principle of equal treatment from Recital 23[1] of the EU ETS Directive (2009/29/EC) so that this can be maintained under each of the two mechanisms by which maximum state aid for such industrial sectors may be calculated:

1) **The first mechanism relies upon electricity consumption efficiency benchmarks (**paragraph 27-a). In this case equal treatment of in- and out-sourced production is assured since the ownership of upstream production units for industrial gases can have no impact on the benchmark which is applicable in an eligible sector**.**

2) **In cases where electricity consumption benchmarks are not defined, a "fall-back mechanism" will be applied** (paragraph 27-b)**.** In such cases, the calculation of maximum state aid will be calculated on the basis of "baseline electricity consumption". The Industrial Gases sector believes that any interpretation by a Member State in which the scope of the baseline might include in-sourced but not include out-sourced industrial gases production would be contrary to the intent of the guidelines. It would also create a market distortion that could drive eligible industrial sectors to re-internalise production of industrial gases with damaging consequences for energy efficiency and for the environment, including bringing about an increase in greenhouse gases emissions

[1] *"Transitional free allocation to installations should be provided for through harmonised Community-wide rules (ex-ante benchmarks) in order to minimise distortions of competition with the Community. […]* ***Furthermore, they should avoid undue distortions of competition between industrial activities carried out in installations operated by a single operator and production in out sourced installations****."*

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in the Union. EIGA notes that the guidelines as adopted by the Commission provide the necessary assurance of equality for outsourcing for eligible sectors applying for aid.

About EIGA

The European Industrial Gases Association, EIGA, is a safety and technically oriented organization representing the vast majority of European and a number of non-European companies producing and distributing industrial, medicinal and food gases. Its members include leading companies with a strong European footprint including Air Liquide, Air Products, Linde Group, Messer Group, Praxair and Gruppo SOL as well as national industry associations.

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