

E.DSO response to public consultation on the revised Climate, Energy and Environmental Aid Guidelines (CEEAG)

4.9 Aid for energy infrastructure

4.9.1 Rationale for the aid

328. In order to meet the Union's climate targets, significant investment and upgrading of energy infrastructure will be required. A modern energy infrastructure is crucial for an integrated energy market that meets climate targets while ensuring security of supply of in the Union. Adequate energy infrastructure is a necessary element of an efficient energy market. Improving energy infrastructure enhances system stability, resource adequacy, integration of different energy sources and energy supply in under-developed networks.

329. Where market operators cannot deliver the infrastructure needed, State aid may be necessary in order to overcome market failures and to ensure that the Union's considerable infrastructure needs are met. One market failure that may arise in the field of energy infrastructure is related to problems of coordination. Diverging interests among investors, uncertainty about the collaborative outcome and network effects may prevent the development of a project or its effective design. At the same time, energy infrastructure may generate substantial positive externalities, whereby the costs and benefits of the infrastructure may occur asymmetrically among the different market participants and Member States. The Commission therefore considers that aid to energy infrastructure can be beneficial to the internal market by contributing to addressing these market failures. This is particularly true for infrastructure projects having a cross-border impact such as Projects of Common Interest, as defined by Article 4 of Regulation (EC) No 347/2013.

[000. Given the need for significant investment and upgrading of electricity infrastructure, it is expected that some DSO/TSO will make use of significant public funding, such as the Recovery and Resilience Facility, to avoid a socially unacceptable increase in the costs paid by users. However, since TSOs and DSOs are mainly remunerated based on the capital invested without receiving any remuneration for investments made with public funding, this may lead to an under-utilization of the available public funding and to a significant delay in the investment and upgrading of electricity infrastructure aiming at accelerating the electrification of society, which is one of the key factors of the energy transition and allowing the digitalization and the integration of renewable energy sources in the network

In order to address this market failure, in some cases it could be necessary to adopt appropriate measures, including the grant of proportionate financial incentives, which will have to be assessed either within the framework of the (revised) state aid framework, including article 48 of the GBER or in light of the specific circumstances and the incentive model used.]

4.9.2 Scope

330. This Section applies to support for the construction or upgrade of energy infrastructure, as defined in Section 2.4, point 18 (35). Unless the project is excluded from State aid control (see point 331), the Commission will assess it as set out in this Section. [The compatibility of granting financial incentives to the DSO/TSO with a view of preventing the under-utilization of public funding \(see point 000\)](#), if such financial incentives qualify as aid, will not be assessed under these guidelines.

An alternative or additional approach could be to modify the state aid framework and article 48 of the GBER (see point 000) to accommodate the realization of the necessary energy infrastructure not only in assisted areas but also in other situations in which a funding gap hampers the development and deployment of innovative energy concepts as part of the energy infrastructure.

331. Energy infrastructure investments which are made within the framework of a legal monopoly are not subject to State aid rules. In the energy sector, this is particularly relevant for those Member States where the construction and operation of certain infrastructures is exclusively reserved by law for the TSO or DSO.

332. The Commission considers that a legal monopoly which excludes distortions of competition exists where the following cumulative conditions are met: (a) the construction and operation of the infrastructure is subject to a legal monopoly established in compliance with Union law; this is the case where the TSO/DSO is legally the only entity entitled to make a certain type of investment and no other entity can operate an alternative network; (b) the legal monopoly not only excludes competition on the market, but also for the market, in that it excludes any possible competition to become the exclusive operator of the infrastructure in question; (c) the service is not in competition with other services; (d) if the operator of the energy infrastructure is active in another (geographical or product) market that is open to competition, cross-subsidisation is excluded; this requires that separate accounts are used, costs and revenues are allocated in an appropriate way and public funding provided for the service subject to the legal monopoly cannot benefit other activities. As regards electricity and gas infrastructure, as Articles 31 of respectively both Directive 2009/72/EC of the European Parliament and of the Council and Directive 2009/73/EC of the European Parliament and of the Council require vertically integrated entities to keep separate accounts for each of their activities, this requirement will in all likelihood be satisfied.

333. Similarly, the Commission considers that there is no State aid involved in investments where the energy infrastructure is run under a 'natural monopoly', which is deemed to exist where the following cumulative conditions are met: (a) an infrastructure faces no direct competition, which is the case where the energy infrastructure cannot be economically replicated and hence where no operators other than the TSO/DSO are involved; (b) alternative financing in the network infrastructure, in addition to the network financing, is insignificant in the sector and Member State concerned; (c) the infrastructure is not designed to selectively favour a specific undertaking or sector but provides benefits for society at large, which is normally the case for gas and electricity infrastructure.

334. Member States also have to ensure that the funding provided for the construction of the energy network infrastructure cannot be used to cross-subsidise or indirectly subsidise other economic activities, including the operation of the infrastructure. For electricity and gas infrastructure, see point 332 (d).