

Commission's Draft Guidelines on State aid for climate, environmental protection and energy 2022

CEDEC response

Brussels, 2 August 2021

General remarks

CEDEC, the European Federation of Local Energy Companies, welcomes the opportunity to comment on the European Commission's draft guidelines on state aid for climate, environmental protection and energy 2022 (CEEAG).

The Green Deal and the new ambitious EU climate targets for 2030 and 2050 require investments that need a coherent and reliable investment framework. Against this background, CEDEC welcomes the revision of the CEEAG in the light of the Green Deal and the more ambitious climate targets.

It is particularly important to ensure that the CEEAG are in line with the overarching objectives of the Green Deal and promote, rather than delay or impede, the achievement of these objectives. This applies in particular to the revision of the Renewable Energy Directive (Directive (EU) 2018/2001 – RED II). The guidelines must take into account that the revision of the RED II will lay the new foundations for the deployment of greenhouse gas (GHG) neutral energies in the EU. To achieve the EU's new climate target of 55% GHG emission reduction by 2030, a significant acceleration of the deployment of renewable energies is necessary. This accelerated expansion can only take place if Member States set effective incentives for their investment and integration. The necessary room for manoeuvre must not be unnecessarily restricted by the revised guidelines.

In the context of financing the interplay of climate change mitigation, climate adaptation and environmental protection, CEDEC also supports the Commission's proposal that state aid measures must not have a negative impact on the environment in the long term.

Section 4.9 "Aid for energy infrastructure" is of particular importance. Especially against the backdrop of the more ambitious climate targets and the steeper decarbonisation path, the guarantee of the future security of electricity supply faces major challenges. The loss of secured capacity in the course of the phase-out of nuclear energy and coal-fired power generation must be compensated for in particular by the expansion of gas-fired CHP plants, and increasingly volatile generation and consumption must be synchronised via smart grids and sector coupling.

CEDEC welcomes that bridging technologies such as gas applications are explicitly mentioned and recognised, as without these technologies a smooth transition to a more sustainable energy system will not be possible. We welcome that investments in gas infrastructure can be considered for state aid if Member States demonstrate that lock-in effects are avoided and the pathway towards achieving the climate targets is not jeopardised.

In order to ensure the transformation of existing gas grids as the basis for the future hydrogen economy and to avoid stranded investments in hydrogen grids or the establishment of H2 readiness of existing grids and plants, grid and plant operators need investment incentives and planning security. The framework for this necessary financial support should now be set with the CEEAG.

To achieve the EU's climate objectives and not make their achievement more difficult through state aid requirements, the revision of the CEEAG is only the first step. Also an extension of the scope of application of the General Block Exemption Regulation (GBER) can be effective support here. Within the framework of the upcoming revision of the GBER, notification thresholds and aid intensities should therefore be set in such a way that a large part of the investments in heating and cooling network systems can be supported in a simplified manner under the GBER. In our view, such aid has little impact on the EU's internal market and can make a significant contribution to achieving the Green Deal objectives.

Summary of key points:

- It must be clarified according to which section the promotion of cogeneration (CHP) of electricity or heat is to be assessed under state aid law. Furthermore, it must be explained to what extent the support for CHP plants is assessed according to the different sections of the CEEAG.
- Investments in new natural gas CHP should be allowed to be supported through fixed market premiums – also with a view to phasing out nuclear energy and coal-fired power generation. Additional requirements, such as a binding decarbonisation roadmap, must be designed with a sense of proportion. This is particularly relevant for large district heating CHPs.
- A conjunction between the guidelines and the criteria for sustainable investments in the Taxonomy Regulation should be avoided since some of the delegated acts will not be published before mid-2022. In addition, some of the technical screening criteria for the "do no significant harm" principle are disproportionately stringent and the details for transitional technologies have not yet been clarified. The criteria should thus not be decisive for the assessment under state aid.
- The individual notification for investments in heating and cooling network systems should be removed. A case-by-case assessment will delay urgently needed investments until 2030 or such investments will not be available due to the uncertainties associated with individual notification.
- There is a need for less bureaucracy and a reduction in lengthy approval processes. Unfortunately, this does not seem to have found its way into all areas of the draft guidelines. One example of potentially new bureaucratic hurdles is the introduction of mandatory public consultation and the obligation to have competitive bidding regimes for all aid for the reduction of GHG emissions as foreseen in 4.1.
- Energy-efficient renovations are usually very capital-intensive and often cannot be implemented without additional aid. Therefore, the planned scope of application for the improvement of the energy and environmental efficiency of buildings must be supplemented by further funding

elements, including district supply, heat recovery, and summer thermal insulation. To initiate the so-called deeper renovations and to avoid "lock-in effects", building owners must also be supported in energy consulting, the development of energy concepts and individual renovation roadmaps.

- Demanding and promoting must not be a contradiction in the future. In the case of energy-efficient refurbishment of existing buildings, it must therefore be possible to provide incentives in the form of subsidies, even if there are any parallel regulatory requirements.
- Smart grids in the electricity and gas sectors will be crucial to achieving the objectives of the Green Deal, so we welcome their explicit mention in the guidelines. The same applies to the mention of "distribution pipelines for the local distribution of hydrogen".
- With regard to the treatment of (environmental) tax reductions as aid, experience has shown that the classification of tax measures in general under state aid law and the interaction with the Energy Taxation Directive in the energy sector pose a certain challenge. Consequently, some clarifying explanations would be welcome.

2.4 Definitions

Paragraph 18 point (67): Definition of 'small and medium-sized enterprise'

Proposal for change:

It should be clarified that in the context of the CEEAG, Art. 3 para. 4 of the Annex of the European Commission (EC) Recommendation 2003/361/EC (hereinafter EC Recommendation) does not apply.

Justification:

Due to the current EU legal definition of small and medium-sized enterprises (SMEs) according to the EC Recommendation, the majority of municipal companies are not SMEs in the sense of the aforementioned recommendation, although municipal companies fall below the threshold values in Art. 1 EC Recommendation. This follows from Art. 3(4) of the Annex to the EC Recommendation. According to this, an enterprise is not a SME if it has a share of capital or voting rights controlled by public bodies of 25% or more. Thus, small and medium-sized municipal companies would not benefit from the relief under state aid law, foreseen for companies of their size.

In this context, it should be noted that Art. 3(4) of the Annex to the EC Recommendation is clearly more disadvantageous for municipal companies compared to the EU law concept of an undertaking. According to the EU law concept of an undertaking, all entities which are legally or de facto controlled by the same entity are to be regarded as a single undertaking¹. However, it must be shown that this control is also exercised by the controlling undertaking. Mere participation without exercising control is not sufficient for several companies involved in one another to be regarded as one undertaking within the meaning of EU law. In Art. 3 para. 4 Annex of the EC Recommendation, however, several companies are considered to be linked if a public authority directly or indirectly holds more than 25% of the shares.

If the applicability of Art. 3 (4) of the Annex to EC's Recommendation is not expressly excluded, municipal companies would in any case have to be enabled to demonstrate that they act independently despite the participation of the public sector.

¹ judgment of the Court of Justice of 13 June 2002, Netherlands v. Commission, C-382/9

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

Paragraph 48d: No reduction of the tender quantities (amount of tenders)

Proposal for change:

If not enough bids are received in a bidding process, the consequence must not be to change bidding processes in the short term and, for example, reduce the tender volumes. Instead, to ensure effective competition in the next bidding process, the causes of the bidding restraint should be eliminated.

Justification:

The guidelines provide that the design of bidding processes in which insufficient bids are received should be corrected during the implementation of a scheme in order to ensure effective competition again in the next bidding process or as soon as possible. In doing so, however, the correction must not consist in a reduction of the amount of tenders. If signed tenders lead to a reduction of tender quantities in the next bidding round, this might reinforce investment reluctance because it is important for investment security to know the tender quantities well in advance. If the tender quantities are no longer reliable, there is a risk that project planning activities and, as a result, participation numbers will drop even further.

3.3 Weighing the positive effects of the aid against the negative effects on competition and trade

Paragraph 69: Delete reference to the Taxonomy Regulation

Proposal for change:

The reference to the Taxonomy Regulation (Regulation (EU) 2020/852), in particular the “do no significant harm” principle, should be deleted.

Justification:

In the future, it is intended to also include the “do no significant harm” criteria from the Taxonomy Regulation in the consideration of the negative effects on competition and trade. CEDEC supports the objective of the Taxonomy Regulation to redirect financial flows towards sustainable investments. The assessment pursuant to Art. 3 of the Taxonomy Regulation is intended to represent the ‘gold standard’ for sustainable investments, and the “do no significant harm” criteria are intended to serve as minimum standards for the assessment of investment projects. However, the taxonomy was not developed with the aim of serving as a guideline for the assessment of environmental impacts and policy trade-offs in the context of state aid measures. Furthermore, the adoption of further delegated acts to the Taxonomy Regulation is required, and several of the delegated acts will not be published before mid-2022. Until these have been adopted, it is therefore not possible to assess whether state aid contradicts the requirements of the Taxonomy Regulation. Several of the technical screening criteria for the “do no significant harm” principle are also disproportionately stringent and the details for transitional technologies are not yet clarified. Therefore, the taxonomy should not be taken into account in the context of a state aid assessment by the EC. The basis for the assessment of environmental impacts and policy trade-offs should be environmental standards prescribed by law and developed for this purpose, not the criteria of the Taxonomy Regulation.

Paragraph 72: Avoid individual case notifications

Proposal for change:

Individual case notifications should be avoided wherever possible. Therefore, the EC's discretionary powers should be based on clear and comprehensible criteria. We assume that projects that have already been approved are subject to comprehensive grandfathering.

Justification:

The overall balance drawn in the context of weighing the positive effects of the aid may depend on further indications, which are mentioned in para. 72. To determine the balance of certain categories, para. 72b entails a requirement to individually notify (case-by-case notification) "projects of a certain size" if the aid is to be provided without a bidding process. There is a risk that this could lead to more individual notifications – contrary to the intention of the EC as stated in the "explanatory notes". The current orientation towards the "hard" thresholds of the previous EEAG for Member States (e.g. aid amount of 15 million euros per company for investment aid) would be replaced by a "soft" criterion. Individual case notifications would entail a great deal of additional work for the EC and the companies and projects concerned.

4.1 Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energies

Preliminary remarks:

CEDEC welcomes the EC's approach of not assessing the compatibility of aid for climate, environmental protection, and energy solely based on the technology and infrastructures used. The CO₂ intensity is primarily determined by the energy carrier or heat source used. Both CHP plants and heating networks (i.e. pipes transporting hot water) are not "fossil" per se, but can also be operated with climate-neutral energy carriers or sources. Consequently, aid should be assessed according to which energy sources are used or which CO₂ emissions are produced as a result.

We welcome that high-efficiency cogeneration is considered by the EC in section 4.1 as a technology contributing to the reduction of GHG emissions (para. 74) and that operating aid is explicitly mentioned as an option (para. 103). CHP systems generate electricity and heat simultaneously in a highly efficient and therefore resource-saving process. Accordingly, they make a significant contribution to climate protection through the provision of electricity and through the provision of district heating and cooling (DHC) (see also section 4.10) as well as to keeping the air clean in cities. They provide value in terms of security of supply in both the electricity (section 4.8) and in the heating sector. These characteristics make CHP plants the ideal partner for renewable energies and, combined with them, can create innovative renewable CHP systems. As for both its multifunctionality and for contributing to several objectives (GHG emissions reduction, security of supply, etc.), aid to CHP installations can be classified under different categories of aid, including in 4.1., 4.2., 4.8. and 4.10.

It is necessary to clarify whether, in the case of CHP plants, the support option under section 4.1 refers only to electricity generation or also to heat generation (district heating). Should section 4.1 refer exclusively to electricity generation, it is necessary to clarify in the CEEAG whether section 4.10 is to be considered for any aid granted simultaneously for heat generation and how the aid for the CHP investment is to be divided in this case for a separate assessment under state aid law.

We are critical of the fact that CCS measures are listed in the draft on an equal footing with "green" measures (sections 4.1, 4.8, 4.10). CCS has been shown to pose risks to the environment and in particular to groundwater and surface water mainly through leakage of CO₂. Security of the public drinking water supply, the groundwater and resource protection necessary for this are of most elementary importance. Should incompatibilities arise between CO₂ storage and drinking water supply, it must be ensured that priority is given to public drinking water supply. Incentives should be created primarily for CCU. The existing storage capacities should be reserved in the long term for the storage of unavoidable residual GHG quantities.

Paragraph 74 and para. 100

The difference between '*aid measures primarily aimed at reducing greenhouse gas emissions*' (para. 74) and aid that '*must reduce the emissions directly resulting from that industrial activity*' (para. 100) should be clarified. Using the single definition "primarily" would be desirable.

Paragraph 80: Adjustment of the monitoring obligations

Proposal for change:

It should be clarified that aid granted for a specific period does not need to be retrospectively adjusted or withdrawn.

Justification:

According to the draft guidelines, measures taken for more than one year are to be regularly reviewed by Member States to determine whether they are necessary. They are to be discontinued when they are no longer necessary. An obligation for continuous monitoring combined with an obligation to adjust the aid, if necessary, can be detrimental to investment security. Decisions for climate-protective investments are made based on long-term planning. In the process, possible aid claims are considered. However, if companies cannot trust that aids granted for the planning and implementation of the investment will be available for the entire funding period approved by the EC, companies could be deterred from investing. It should thus be clarified that subsidies already approved by the EC are not covered by para. 80.

Paragraph 82 ff.: Technology-specific support for CHP

Proposal for change:

The support for cogeneration must be maintained as technology-specific support (para. 82). It should be made clear that this is possible on the basis of the listed exceptions (para. 83), as it contributes to achieving the energy efficiency targets of the Energy Efficiency Directive (Directive 2012/27/EU – EED), and to improve air quality (compared to other heat generators). Finally, it has a high decarbonisation potential in terms of cost efficiency (low CO₂ avoidance costs) and contributes to grid stabilisation through decentralisation and supply-independent controllability (para. 83(a), (c), (d), (e)).

Paragraph 83

Concerning points (d) and (e) of para. 83, it should be clarified whether, in case one type of production is substantially more competitive than another, the EC will decide to approve aid exclusively for the most competitive technology. This might have distorting effects on competition between production sources.

Paragraph 85: Clarifications on consultations to be carried out

Proposal for change:

The process that should follow the consultation should be further specified. Furthermore, it should be clarified that those consultations within the framework of legislative procedures which meet the requirements of para. 85 are sufficient.

Justification:

It is unclear how Member States must proceed with the consultation results and how these must be communicated to the EC. A streamlined process that is organised as simple as possible, is the only way to ensure that transaction costs are minimised for all parties involved.

In this context, CEDEC calls for clarification that consultations, which are often common in the legislative process, are sufficient if they fulfil the requirements in para. 85 ff. Otherwise, there is a risk that because of a separate consultation, aid will be granted late due to bureaucratic hurdles. In certain areas, waiting for the approval of aid measures under state aid law leads to investments being postponed.

Paragraph 89 ff.: Support via fixed surcharge rates / waiver of biddings

Proposal for change:

The support of cogeneration should be made possible exclusively via fixed surcharge rates, i.e. without tendering. At the very least, aid for CHP plants with an electrical output of less than 1 MW should be considered a "small project" in para. 92, and an exemption for CHP plants with an electrical output of more than 50 MW should be introduced (para. 92).

Justification:

In principle, the EC's approach of generally granting aid on the basis of section 4.1 within the framework of a bidding process is to be assessed critically. The bidding process for CHP, unlike for renewable energies, does not appear to be a suitable model for achieving the deployment targets as cost-effectively as possible.

Due to the irregularity of large-scale projects and the large volume of individual large-scale projects – and correspondingly a small number of players and projects – these installations are difficult to accommodate in a tender with relatively constant volumes. It can therefore regularly be assumed that the intended exception (para. 92a) will come into effect.

With regard to the GHG emissions reduction target, tenders are absolutely counterproductive for the intended and more strongly incentivised fuel switch, because bidding processes significantly reduce planning security, which is existential especially for large-scale public supply projects. Moreover, the GHG emissions reduction of large-scale district heating systems can only succeed through the interaction of different technologies. CHP plants are therefore often a component of an overall heat supply concept. Due to the uncertainty of success in a bidding process, it is difficult to develop an overall portfolio.

This also raises the question of alternative heat supply for district heating networks (covered by section 4.10.) if the auction is not won. In many places, there is a risk that if the bid is not accepted, the heat supply will be uncoupled instead of CHP, and thus detrimental to the GHG emissions reduction target.

For large CHP projects (> 50 MW electrical output), an explicit exemption should therefore be introduced in para. 92.

With regard to small CHP projects, the disadvantages of a bidding process, namely the high administrative burden and greater investment uncertainty, outweigh the minor regulatory advantages. Thus, the

exemption in para. 92b should be designed in such a way that it covers CHP plants with a capacity of less than 1 MW.

Paragraph 104: Enabling differentiated rules for support in case of negative prices

Proposal for change:

The guidelines should not provide for a fundamental subsidy freeze in case of negative prices. Instead, it should be up to Member States to weigh the positive and negative effects of such a measure and to adopt a differentiated regime.

Justification:

According to the draft guidelines (para. 104), companies should not receive aid for production in times when the market price for the production is negative. In the case of the electricity market, it must be considered that an oversupply of electricity can be at least partly caused by an inflexible operation of fossil power plants. A subsidy freeze for renewable electricity in times of negative prices can lead to renewable energy plants being shut down and fossil power plants continuing to operate. In addition, it should be taken into account that the loss of aid during negative prices makes it more difficult to finance renewable energy projects; this circumstance can have an increasing effect on the bid level in the tenders and make the costs of renewable energy expansion ultimately more expensive.

To ensure security of supply with heat from CHP-based heat grid systems, generation at certain times, e.g. even when electricity prices are negative, is unavoidable. Therefore, differentiated rules are needed taking into account the economic and ecological value of high-efficiency CHP heat.

Paragraph 107: Aid for CHP despite displacement of alternative, clean technologies in exceptional cases

Proposal for change:

Eligibility of aid for CHP should not be made dependent on whether renewable and biomass electricity is displaced on a calculatory basis. The heat supply of connected customers and associated CO₂ reductions must also be considered.

Justification:

Para. 107 would prevent, for example, investments in biomass plants (waste wood, landscape conservation wood, etc.) from being supported, which ensure the maintenance of the base load and make an important contribution to security of supply.

In order to ensure security of supply with heat from CHP-based heat grid systems, generation at certain times, e.g. also when electricity prices are low or renewable energy is curtailed, is unavoidable. The economic and ecological value of high-efficiency CHP heat should be considered accordingly.

Paragraph 110: No restriction on aid for natural gas CHP

Proposals for change:

- The specifications for the admissibility of aid for natural gas-based technologies must take into account the role of gas-fired power plants in ensuring security of supply in a power generation mix dominated by wind and solar power.
- The support for natural gas CHP should not be restricted by reference to the additional costs. The envisaged requirement of a binding decarbonisation roadmap must not lead to urgently needed investments in natural gas CHP being made more difficult to maintain security of supply.

Justification:

- Due to their good controllability, gas-fired power plants play an important role in balancing the fluctuating feed-in from wind and solar energy. In this way, they make a significant contribution to ensuring that the switch to renewable energies is possible without compromising security of supply.
- It is positive that investments in new natural gas CHP plants are eligible in principle under section 4.1. However, it is critical that only the additional costs of a CHP plant that runs in CHP mode are eligible compared to separate generation (para. 110, footnote 64). It is also unclear whether the underlying counterfactual investment is a condensing power plant, a heating plant or both. In view of the climate neutrality goal and the long service life of the plants, it is understandable that the EC would like to oblige Member States to explain an "exit strategy" to avoid "lock-ins". In doing so, the EC acknowledges that CHP should not be treated as a lock-in technology, as it can be operated with renewable gas, hydrogen, or synthetic natural gas.

As an example, the EC states that the aid recipient should make a binding commitment to replace natural gas with renewable or low-carbon gas. It is questionable how this binding commitment should be structured in terms of timing, quantities used, etc. Moreover, it will be very difficult to make statements in this regard now and to take them into account in the economic calculation and risk assessment. There is a risk that this requirement will lead to a great reluctance to invest, although the expansion of natural gas CHP is necessary on a large scale in view of the nuclear energy and coal phase-out.

Paragraph 110 ff.: Priority of CCU over CCS

Proposal for change:

It must be made clear that the safety of the public drinking water supply and the necessary groundwater and resource protection have absolute priority over CO₂ storage. Thus, CCU is to be preferred to CCS and green alternatives are to be favoured more than CCS.

Justification:

As justification we refer to our remarks above on section 4.1.

Paragraph 113: No application of the “do no significant harm” principle for aid for natural gas CHP

Proposal for change:

Para. 113 should be deleted. The assessments of the Taxonomy Regulation must not be included in the notification procedure for the purpose of examining compatibility of the aid with the common market.

Justification:

For our justification, we refer to point 3.3 (see p. 4).

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

Paragraph 116: Addition to the scope of application and eligible activities

Proposal for change:

The scope and eligible activities shall be completed by the following points:

1. Eligibility of systems that supply buildings in a spatial context (neighbourhood) with heat via local heating networks (neighbourhood heat) or with electricity without grid feed-through (tenant electricity)
2. Connection to district and local heating networks, i.e. investment, installation and commissioning of house transfer station and pipe network on the property of the building supplied
3. Energy-efficient ventilation with heat recovery
4. Measures for summer thermal insulation
5. Sustainable and best renewable insulation and building materials and generally new innovative building materials
6. New and innovative construction and renovation methods
7. Energy consulting, development of energy concepts, individual renovation roadmaps
8. Facade greening

Justification:

It must be clarified that para. 116(a) also covers systems that supply buildings that are spatially connected (neighbourhood) with heat via local heating networks (neighbourhood heating) or with electricity without grid feed-through (tenant electricity). In addition, the rules should also apply to CHP plants, regardless of whether they use renewable energy sources or temporarily natural gas.

The connection to district and local heating networks – i.e. investment, installation and commissioning of the house transfer station and pipe network on the property of the building supplied – should in principle be supported at the same level as the installation of building-specific heating systems.

The energy-efficient refurbishment of the building stock in the EU is key to achieving the EU's climate targets. Energy refurbishments are usually very capital-intensive and therefore often not feasible without complementary subsidies. Therefore, aid should be extended to innovative and forward-looking energy products and services.

Energy consultations, the development of energy concepts and individual refurbishment roadmaps are an important basis for decisions on the implementation of energy refurbishment measures. Property, house and flat owners can only successfully implement an energy retrofit if they know which measures should be carried out in which order. In this way, lock-in effects can be avoided, and so-called "deep renovations" are encouraged. It should be possible to combine aid for improving the energy efficiency of buildings with subsidies for energy consultations, the development of energy concepts and individual refurbishment plans. In addition, green facades, like green roofs, have been proven to support the climate and energy balance of buildings and can also have a positive effect on the urban water balance.

The measures listed above should also apply to new buildings (except for renovation measures).

Paragraph 118 ff.: Support even without proof of primary energy savings

Proposal for change:

With regard to both existing buildings and new buildings, exceptions must be made to the objective that investments must lead to certain primary energy savings. The following investments must also be eligible without proof of primary energy savings:

1. Energy-efficient ventilation with heat recovery
2. Measures for summer thermal insulation
3. Energy consulting, renovation roadmaps and development of energy concepts
4. Roof and façade greening
5. Sustainable and best renewable insulation and building materials and generally new innovative building materials
6. New and innovative construction and renovation methods

Justification:

Not every efficiency measure can reduce the primary energy demand by at least 10% compared to a threshold value (for new buildings) or 20% compared to the situation before the refurbishment (for renovated buildings). Nevertheless, the listed measures contribute significantly to the reduction of primary energy demand and thus the improvement of the overall efficiency of the building. Therefore, exemptions from the planned rules should be granted. Furthermore, it should be recognised that not every aid measure contributes to a significant reduction in primary energy consumption on its own, but rather a combination of measures.

Paragraph 119: Enable support for all companies

Proposals for change:

- Aid for the improvement of the energy performance of buildings should be granted to all undertakings that undertake energy performance improvement measures (energy performance contracting) within the meaning of Article 2(27) of the EED. The focus is on the respective project and its climate contribution and not on the implementing company. Climate protection measures, legal framework and funding conditions would thus become accessible to a broad target group.
- A link to the definition of SMEs according to EC Recommendation 2003/361/EC should expressly not be made. In any case, Art. 3(4) of the Annex of the EC Recommendation, which excludes municipal companies from the definition of SMEs, should explicitly be declared inapplicable.

Justification:

Energy performance contracting represents a good opportunity to sustainably increase both energy and cost efficiency in energy production for larger residential buildings as well as in business and industrial enterprises. To further promote market penetration, there should be no restrictions on the group of addressees when granting aid. In particular, the application of the EC's SME definition would exclude a large number of municipal companies from this forward-looking energy service (cf. also p. 3).

Paragraph 122: Incentive effect despite alignment with Union standards

Proposal for change:

In the case of energy-efficient refurbishment of existing buildings, an incentive effect is also to be welcomed if the investment is only intended to bring the building up to EU standards already in force.

Justification:

A major challenge on the way to climate neutrality is the energy refurbishment of the building sector. In 2050, 85-95% of today's buildings will be still standing. Depending on the condition of the building, energy refurbishments can be very expensive and thus exceed the financial burden limit of many property owners. Thus, it is important that despite any EU requirements, such as the "Minimum Energy Performance Standards (MEPS)" currently being discussed with regard to the upcoming amendment of the Energy Performance of Buildings Directive (EPBD), refurbishment measures to achieve these regulatory requirements may also be funded via EU or national programmes. Otherwise, there could also be a risk that these properties would have to be sold and/or demolished and rebuilt.

Paragraph 125: Base eligible costs on achievement of energy / CO₂ savings

Proposal for change:

Eligible costs should also be based on the achievement of energy and CO₂ savings through the funding measure. The criterion should be: the higher the savings, the higher the funding.

Justification:

According to the current rules, the eligible costs are to be based exclusively on the investment costs that are directly linked to the achievement of a higher energy or environmental performance. In CEDEC's view, this rule is not appropriate. Rather, the objective of the aid, namely the improvement of the overall efficiency of the building, should be a benchmark in determining the eligible costs. The aid granted should also be based on the savings in primary energy demand or CO₂ emissions to be achieved. By linking the funding level to primary energy consumption/CO₂ savings, it could be achieved that houses can be energetically renovated in accordance with their structural conditions. Higher primary energy consumption savings and CO₂ savings should be supported by higher funding rates.

4.7 Aid in the form of reductions in taxes or parafiscal levies

Preliminary remarks:

The concept of granting (environmental) aid by reducing (environmental) taxes or similar (environmental) charges is not an exclusively state aid law issue. In fact, aspects of tax law also play an important role in this context and both must be reconciled with each other. This begins with the gradual distinction between selective and general tax advantages, the assessment of which is made even more complex by rebates. If such tax measures qualify as aid, the question also arises as to what extent the notification thresholds of Art. 4 of the General Block Exemption Regulation (in particular Art 4 (1) lit s - x GBER) are to be applied to such tax measures.

Since such reductions must be brought to the attention of the EC in accordance with Art. 26 of Directive 2003/96/EC (Energy Taxation Directive – ETD) – not least for the purpose of the examination under state aid law – and there is thus always a point of friction with EU state aid law, some clarifying statements by the EC would be highly welcome on the following points:

- Presentation of criteria according to which general environmental tax measures are to be distinguished from selective environmental tax measures (e.g. compensation of a potentially selective advantage of a measure by complementary taxes);
- Presentation of criteria according to which aid in form of environmental tax reductions falls below the notification thresholds of the GBER (e.g. determination of when an energy efficiency project

exists or to what extent indirect support for the production of electricity from renewable energy sources would suffice for an exemption);

- Interaction of the guidelines with the ETD.

Paragraph 264: “Production costs” too narrow; cost transfer should be deleted

Proposal for change:

The term “costs” should be used instead of “production costs”. The requirement that costs cannot be passed on to customers should be deleted.

Justification:

Environmental tax refunds/reductions are not only available to production plants, but also to companies that treat and dispose of wastewater and waste among others. It should therefore be clarified that these companies can also receive aid in the form of reductions and exemptions from environmental taxes.

Para. 264(c) is imprecise and not appropriate. It is not sufficiently clear what requirements are placed on the term "significant sales reductions". Moreover, in practice the criterion of the pass-on of taxes to customers is not a suitable criterion for assessing the necessity of aid. Simply stating that higher taxes can easily be passed on to customers through the levying of cost-covering local taxes and fees falls short in practice. Cost increases only prove to be representable if they are also comprehensible and justified. Often taxes can be passed on to customers as costs. However, this sometimes leads to considerable resentment among the population. Overstretching the legal possibility of passing on costs would often mean losing political acceptance for the reasons of cost increases among citizens. As a result, higher costs due to tax increases inevitably compete with other measures and requirements and, for example, affect long-term investment requirements such as infrastructure maintenance.

Paragraph 269a: Residual burden of 20% of the national environmental tax to be deleted

Proposal for change:

Para. 269(a) should be deleted.

Justification:

The EC intends to notify aid in the form of environmental tax reductions only if the company is charged at least 20% of the national environmental tax. This is in contradiction to other EU legislation, such as Art. 15 of the ETD. According to Art. 15 ETD, Member States have the possibility to grant full or limited tax exemptions or tax reductions. This possibility to grant full tax exemptions should not be restricted by the application of Art. 107 TFEU.

4.8 Aid for security of electricity supply

Paragraph 321

Proposal for change:

Sub-point (d) should be clarified to the effect that a provision outside the energy market is only required if the resource also receives remuneration for holding capacity for the strategic reserve during the

relevant period within the contract term. We propose to change para. 321(d) as follows:

"In order to ensure that market pricing is not distorted, the following additional cumulative requirements apply to strategic reserves and other measures where capacity is held outside the market.

[...]

(d) The resources in the measure are to be held outside the energy markets at least for the duration of those periods within the duration of the contractual period for which they receive remuneration from the strategic reserve".

Justification:

Regarding sub-item (d), we would welcome clarifications with regard to the wording "for at least the duration of the contractual period". The current text leaves open whether participation in the strategic reserve is also open to operators of power plants that are only shut down temporarily (e.g. seasonally) and actively participate in the market during the remaining time, as is regularly the case with CHP plants. In practice, this could lead to difficulties of interpretation if resources of such CHP plants are available as a strategic reserve in the summer season, but participate in the market again in the winter season and receive a single multi-year contract for several such periods, which, however, only provides for remuneration for those periods in which there is a provision of resources outside the energy market remunerated within the framework of the strategic reserve (whereby in the aforementioned example, only the summer season would naturally be remunerated from the strategic reserve). If, on the other hand, the above-mentioned wording is interpreted strictly, and temporarily shut-down CHP plants are categorically excluded from the strategic reserve, this will have negative effects on the energy market. Firstly, there would be a risk of insufficient resources being made available for the strategic reserve, jeopardising security of supply. Secondly, potential bidders would be discouraged from participating in a bidding process, so that the number of bidders might not be large enough to ensure effective competition. A strict interpretation of this requirement would run counter to the objectives of the guidelines.

4.10 Aid for district heating or cooling

Preliminary remarks:

It is to be welcomed that DHC are included in a separate aid category. In contrast to electricity and gas grids (which are covered by section 4.9), heating grids are locally or regionally delimited systems with a defined number of customers. A spatial distribution of heat is only possible in the respective network concerned and, due to network losses, it is only efficient over a distance of a few kilometres. The relationship between heat demand and heat generation must be finely adapted to one another in a heating network. The procurement of short-term balancing heat, e.g. via trading as in the electricity and gas sector, is not possible. On the other hand, the heat cannot simply be sold to a new customer – which is possible throughout Europe in the case of electricity and gas. Against this background, it is positive that generation, storage and distribution of heat and cold can be supported (para. 341).

The connection to district and local heating networks, i.e. investments, installation and commissioning of the house transfer station and pipe network on the property of the building supplied as well as the modernisation of existing house transfer stations, should also be eligible for funding in this section or in section 4.2. Moreover, it is to be welcomed that a variety of producers – from renewable heat to unavoidable waste heat to CHP plants – can be supported (para. 342).

As regards the multifunctionality of district heating CHP plants, it is necessary to clarify whether, in the case of CHP plants, the support option under section 4.10 refers only to heat generation or also to electricity generation. Should section 4.10 refer exclusively to heat generation in the case of support for CHP plants, a clarification in the CEEAG would be necessary as to whether section 4.1 has to be considered for any aid granted simultaneously for electricity generation and how the aid for the CHP investment is to be divided in the case of a separate assessment under state aid law.

Another positive aspect is that aid should continue to be eligible even if the investments in the heating network system do not yet meet the energy efficiency requirements, but necessary measures are taken within three years (para. 343). We expressly welcome the EC's inclusion of unavoidable waste heat.

Paragraph 341 and 342: Adjust scope of application and supported activities

Proposal for change:

In addition to investments, the operation of plants that produce renewable heat should also be eligible for aid. This applies especially to grid-connected large-scale heat pumps and geothermal and solar thermal plants (para. 341). Aid measures should also cover the construction and modernisation of generation plants that serve to supply as well as cover peak loads (para. 342).

Justification:

The comparison of district heating produced with different "green" technologies with district heating from fossil fuels shows that the production costs for green district heating are currently more than twice as high. Even in 2030, they are still above the fossil district heating price – despite expected increases in natural gas and CO₂ prices for fossil district heating generation and cost reductions for renewable heat generation due to economies of scale and technical advancements or potentially decreasing electricity purchase costs (heat pump, geothermal).

In order to enable the market ramp-up of grid-bound heat pumps on an industrial scale, there is a need for operating cost subsidies in addition to investment cost subsidies in order to alleviate the slow decline in the burden of the electricity surcharge and levy system.

In principle, the security of supply with climate-neutral heat must also be guaranteed in the future. Systems for backup, e.g. in case of failure of a large heat pump, and for peak load coverage on particularly cold days are therefore still indispensable. It should be made clear that these systems are part of the DHC system and are hence also eligible for aid (para. 342).

Paragraph 343

- It should be clarified when the calculation of the three-year period starts.
- In addition, it should be clarified what is meant by "commit to start", specifying if it is necessary to prepare a prior investment plan or to have already had access to the necessary financing.
- Finally, clarification is needed as to whether the incentive effect over the three years period foreseen by the new guidelines also applies in case of new DHC systems.

Paragraph 345: Changes in the determination of the proportionality of the aid measure

Proposal for change:

The application of the so-called "funding gap principle" should allow for the quickest and most resource-

efficient calculation and approval under state aid law.

Justification:

With regard to the use of the "funding gap principle" (para. 345), we are wondering which methodology and on the basis of which assumptions the "economic viability gap" is determined compared to a failure to invest as a counterfactual scenario (para. 346).

Unless the already established methodology of aid intensities is adhered to, it is important in our view that the EC establishes criteria in the CEEAG as to how the economic viability gap is supposed to be determined in order to avoid lengthy discussions in state aid approval procedures.

Paragraph 347: Changes required in the balancing test

Proposals for change:

- The use of oil-based heating plants for back-up of peak load coverage must not have a negative impact on the promotion of the transformation of heating and cooling network systems.
- It should be added in para. 347(b) that the distribution network is or will be suitable for the transport of unavoidable waste heat. Furthermore, the cumulative requirements to be fulfilled should be made more realistic.

Justification:

With the provision in para. 347, the EC intends to exclude that investments in DHC systems are supported which lead to an increase in energy production with hard coal, lignite, oil and diesel. This is understandable. However, as the rules in its current form are open to interpretation, we ask to clarify that the construction of renewable heat generators and the integration of unavoidable waste heat as well as any necessary expansion and modernisation of the network are also eligible if oil-based heating plants are used for backup or peak load coverage. The use of these plants does not mean that the modernisation and construction of the entire district heating and cooling system is "based" on the use of these fuels. In addition, support should also be permissible if, due to an expansion of renewable heat generators or greater use of unavoidable waste heat, the required capacity, and possibly heat generation, by oil-based heating plants increases (para. 347c).

In principle, security of supply with climate-neutral heat must be guaranteed. Systems for backup, e.g. in case of failure of a large heat pump, and for peak load coverage on particularly cold days are therefore still indispensable. Due to the dependency on supply, the higher land consumption or high additional costs, renewable heat generators, except for biomass, are hardly suitable for this task. Heat storage systems are to be understood as a supplement and not as an alternative, as they usually only serve as short-term storage.

For these reasons and the fact that oil-based heating plants are only operated for a few hours to days a year for backup and peak load coverage, it can be concluded that the advantages in terms of cost efficiency and practicability clearly outweigh the disadvantages in terms of climate protection.

Paragraph 348: Changes required in the balancing test

Proposal for change:

The envisaged requirement of binding obligations to phase out or switch from the use of natural gas, e.g. via a decarbonisation roadmap, must not result in urgently needed investments in natural gas-based CHP plants being made more difficult in order to maintain security of supply. This applies analogously to natural gas-based heating plants, which can serve cost-effectively and with low environmental impact in district heating and cooling systems to cover peak loads on particularly cold days and to back up renewable heat generators and unavoidable waste heat.

Justification:

With regard to the eligibility of investments in natural gas-based CHP plants and heating plants, we refer to our justification as regards para. 110 (see p. 8-9).

With regard to the importance of natural gas-based heating plants for collateralisation and peak load coverage, we refer to our assessment in regard to para. 347 (see p. 16), especially since there is a functional comparability with oil-based heating plants.

Paragraph 348: No equal treatment of CCU and CCS in the context of the scope of the balancing test

Proposal for change:

It must be made clear that the safety of the public drinking water supply and the groundwater and resource protection necessary for this must have absolute priority over CO₂ storage. Therefore, CCU is to be preferred to CCS and green alternatives are to be favoured more than CCS. Only in the case of clearly unavoidable CO₂ emissions, such as those arising from thermal waste utilisation, the option to promote the use of CCS should remain open.

Justification:

We refer to our remarks on section 4.1.

Paragraph 349: No individual assessment for aid for district heating and cooling systems

Proposal for change:

It is essential to refrain from the case-by-case assessment that the EC additionally provides for aid for district heating and cooling systems.

Justification:

It is highly critical that the EC wants to carry out a case-by-case assessment when analysing the effects of state aid for district heating and cooling systems on competition and when weighing them against the supported economic activity, in which it will evaluate the benefits of the projects in terms of energy efficiency and sustainability against the negative effects on competition and in particular the possible negative effects on alternative technologies or providers of heating and cooling services and networks. Here, we also refer to our assessment of para. 72 (see p. 4-5) In our understanding, this would affect all projects that involve the construction or modernisation of heating or cooling network systems – from generation, distribution and transfer of heat or cooling.

So far, the current EEAG provide for a notification threshold per project of €50 million per company for energy infrastructure and €15 million per company for investment aid for individual notification. In our view, these thresholds are already significantly too low in view of the large investments required by 2030.

The now intended fundamental case-by-case assessment represents a significant hurdle for the urgently needed investments in heat grid systems. It would further increase investment uncertainty and would most likely be accompanied by delays. This request is thus in direct contrast to the declared objectives of the EU to quickly reduce CO₂ emissions from the building sector. We therefore urgently advise against individual notification.

4.12 Aid for coal, peat and oil shale closure

Preliminary remark:

CEDEC welcomes the fact that with the state aid guidelines the EC lays down a framework that will enable Member States to compensate operators of coal-fired power plants whose plants are shut down before the end of their economic life as a result of politically induced coal phase-out measures.

Proposal for change:

The specifications on the admissibility of aid for the compensation of premature coal-fired power plant closures must take into account the aspect of premature depreciation and make it possible to avoid it in the long term.

Justification:

Premature decommissioning significantly encroaches on the property rights of the operating companies concerned and must be adequately compensated - also against the background of legal and investment security. This applies in particular if the affected power plants are not yet at the end of their technical service life after only a few years of operation and have high residual book values.

Paragraph 373: Closure period of one year for coal, peat and oil shale activities too short

One year is a too short period for the implementation of the closure after granting the compensation. It should be clarified which exceptional circumstances may justify the adoption of longer periods.

5 Evaluation

Paragraph 399

As regards "*the Commission may require that notifiable aid schemes be subject to an ex post evaluation*", it must be specified what ex-post evaluation implies. It should be explicitly excluded that aid subject to an ex-post evaluation can be withdrawn in case of a negative evaluation.

7 - Applicability

Paragraph 414

Proposal for change:



The following wording should be added to para. 414:

"Existing aid schemes within the meaning of Article 1(b) of Council Regulation (EU) 2015/1589 concerning operating aid for the promotion of renewable energy sources and combined heat and power need only be adapted to these guidelines if Member States wish to extend them or need to re-notify them after ten years or after the expiry of the period of validity of the Commission Decision or wish to make changes."

Justification:

In para. 414, Member States are to be obliged to adapt their existing support systems to the new guidelines within two years. This would also apply to already existing approved support mechanisms. Should this be the case, it would lead to massive investment uncertainty and at the same time interfere with existing projects and investment plans. In our view, this provision is difficult to reconcile with the principles of the rule of law. In view of the expected reluctance to invest, this would also jeopardise the achievement of the objectives associated with the CEEAG. In any case, an exception for long-term investments should be provided for, analogous to the rules of the currently applicable EEAG.

Contacts:

Gert De Block, CEDEC Secretary General
gert.deblock@cedec.com

Andrea Przybyla, Senior Policy Advisor
andrea.przybyla@cedec.com