

Public consultation on the revised Climate, Energy and Environmental Aid Guidelines (CEEAG)

Energy Norway is an association that represents the whole electricity chain in Norway. In other words, our members include companies producing, transporting and trading electricity. Our members produce 130-140 TWh annually, which is around 95 percent of all power production in Norway. Our members have approximately 2.5 million grid customers, which is about 90 percent of Norway's grid customers. Norwegian power production is almost 100 percent renewable and emission-free. 95 percent of the power production stems from the 1600 hydropower plants, and 3.5 percent is generated from wind power.

Climate change is unarguably one of the most significant challenges the world is faced with today and we need to reduce our emissions globally. Energy Norway therefore fully supports the EU's ambitious energy & climate initiatives to reduce emissions as stated in the European Green Deal¹ and legally binding under the European

¹ https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

www.energinorge.no

Postboks
7184 Majorstuen, 0307 Oslo

Besøksadresse
Middelthuns gate 27, 0307 Oslo

Telefon
(+47) 23 08 89 00

E-post
post@energinorge.no

Climate Law.² Furthermore, Energy Norway believes that policy measures to increase direct and indirect electrification are crucial to driving the transition towards an all-electric, fully renewable, and low-carbon society.

The Green Deal is Europe's new growth strategy for the future, where the power sector plays a central role. The transition to a carbon-neutral economy will require significant investments and changes in how we produce, utilise and distribute electricity. The guidelines on state aid for climate, energy and environmental protection (hereafter CEEAG), is therefore of high importance for the power sector.

Firstly, we would like to express our support for the increased focus on climate in the state aid guidelines. Furthermore, we welcome the Commission's proposal of broadening the scope of the CEEAG into new areas such as clean mobility and energy efficiency in buildings. These areas will be important emission-cutting contributors to meet the 2030 climate target. In addition, Energy Norway welcomes the new proposal in the CEEAG to phase out fossil fuels subsidies. We also endorse the Commission's general market-based approach for the state aid guidelines framework, with an increased focus on transparency and competitive bidding. However, we call for improved clarity of some sections of the CEEAG, to further ensure the adoption of a clear and cohesive legislative state aid framework. Energy Norway points to that the framework for the Green Transition - and thereby the CEEAG, must allow, and not impede innovation.

Energy Norway is of the general opinion that a well-functioning and competitive market will deliver the most effective price signals, which will drive investments and a sustainable transition. Effective carbon pricing mechanisms such as the EU Emissions Trading System (ETS), will contribute to create the correct market signals. In general, state aid could have unintended effects and distort these market signals and should consequently be used with utmost caution. However, we acknowledge that state aid may be required in some cases. Principally, we believe state aid should largely be conditioned on technology maturity. For instance, certain immature technologies might require subsidies for a transitional period, to reach a commercially viable competitive level. On the other hand, mature technologies should not need subsidies to compete in the market.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588581905912&uri=CELEX:52020PC0080>

Please find our summarised main points below:

1. State aid for reduction and removal of GHG emissions including support for renewable energy
 - I. Mature markets can deliver emissions reductions without state aid
 - II. Large amounts of state aid cause price distortion on interconnected markets
 - III. Overlapping policies targeted at the same market failure should be avoided to avoid undercutting the policies' effect
 - IV. Immature technologies might require aid to enter into a commercial phase
 - V. Energy Norway would welcome greater clarity of the scope of section 4.1 and which activities fall within the scope
 - VI. Energy Norway calls for clarification of article 99 section 4.1.4 for activities covered by the EU ETS
 - VII. Energy Norway asks for further clarification for the definition of "*energy from renewable sources*" in article 2.4(34)

2. Impact of the Taxonomy Regulation on state aid
 - I. Taxonomy and delegated acts offer regulatory uncertainty before finalised
 - II. The Taxonomy Regulation should only be used on a voluntary basis as condition for state aid

3. State aid for clean mobility
 - I. Energy Norway argues that demand-side driven support for hard-to-abate sectors might be necessary, but is more efficient when steered towards the demand side
 - II. Aid to charging infrastructure might be needed to overcome market barriers for electric vehicles and achieve a network effect
 - III. Energy Norway would point to the fact that it is not the role of the DSO to own, develop, manage or operate charging infrastructure as embedded in the Clean Energy Package

4. Aid for energy infrastructure

- I. Energy Norway welcomes the effort to secure a modern energy infrastructure which is crucial for an integrated energy market that meets climate targets while ensuring security of supply, but due regard should be taken to parallel ongoing negotiations before any process and reference are adopted. Energy Norway also asks for transparency and a legal framework which ensures a harmonised and level playing field where CCEAG does not provide for some Member States to be allowed to grant state aid to infrastructure due to a legal set up falling outside the guidelines. It is important that the criteria set for financial support to infrastructure will not distort and prevent different ownership modelling to emerge. The latter is particularly imperative to the development of offshore renewable energy where hybrid solutions demand a very coordinated and equal level playing field regulation to create one European market

1. State aid for reduction and removal of GHG emissions including support for renewable energy

I. The European electricity market is a mature competitive market, driven by market signals that is capable of decarbonising without state aid. The emissions in the power sector have in the latest years been reduced at unprecedented speed. The power sector cut their emissions by 15 percent in 2019 alone, largely due to renewables replacing coal, according to the Commission's EU Climate Action Progress Report 2020³. The EU ETS is a key driver to forming the market signals that has led to a faster decarbonisation of the power sector. Moreover, the EU ETS is an established, well-functioning system with a proven record to drive market participants to internalise negative externalities such as CO₂ emissions. Hence, we believe that the EU ETS is the best suited mechanism to deliver efficient price signals for renewable energy investments. Energy Norway is therefore of the opinion that, in general, state aid for renewable energy should not be necessary to drive investments to renewable energy transition.

II. Large amounts of state aid for renewable energy generation are likely to produce unduly negative effects on trade in an integrated market, where the market itself can deliver the outcome needed. The European electricity market design is an

³ https://ec.europa.eu/clima/sites/clima/files/strategies/progress/docs/com_2020_777_en.pdf

integrated market where electricity flows across borders and bidding zones. Because of its design and the nature of electricity flows, the power market reacts quickly to price arbitrage between the different domestic markets. Large subsidies in one domestic market, will therefore by the very nature of integrated markets, have wider consequences for adjacent and coupled electricity markets. Subsidies for renewable energy generation could therefore lead to unnecessary price cannibalisation because of incorrect price signals. Such a situation is undesirable and inefficient, while will also produce an overall greater socio-economic cost.

III. Energy Norway is of the opinion that state aid might not be the most appropriate policy instrument for facilitating additional renewable energy generation, due to overlapping policies aimed at the same market failure. Several policies targeted at the same market failure could lead to counteraction among policies. Furthermore, it could lead to the undermining of one policy over other legislative instruments. In the case of state aid for renewable energy generation, this policy serves as an additional measure to address the same market failure already targeted by carbon pricing. Hence, we would advise the Commission to be cautious of using overlapping policies to target the same market failure. Instead, Energy Norway would suggest increasing efforts to facilitate for market-based incentives such as the Guarantees of Origins (GOs) certification system, to increase economic incentives for renewable energy investment. Consequently, in our opinion, state aid would not be the most appropriate instrument to incentivise new renewable energy generation. Instead, Energy Norway is arguing for an increased focus to strengthen existing market-based instruments.

IV. On the other hand, we acknowledge that state aid might be required in cases for immature renewable technologies in early life cycle stages to reach a commercial phase. In particular, state aid may be granted to immature technologies in a growth phase of the life cycle. One such example of a renewable technology is floating offshore wind power, which is not currently commercially competitive. State aid to immature technologies – as opposed to mature technologies such as bottom-fixed offshore wind – might be an appropriate mechanism to address the funding gap for negative business cases. But even in such instances, authorities must make sure the positive conditions outweigh the negative conditions, like market distortion.

V. Energy Norway would welcome greater clarity of the scope for section 4.1 State aid for reduction and removal of GHG emissions including support for renewable energy. As it now stands, Energy Norway finds it difficult to deduce whether certain

projects are covered by this section or by other sections, which could significantly change the state aid process. For instance, it could be argued that green steel/ammonia/hydrogen are all covered under section 4.1 – and therefore within the CEEAG framework. However, one could also understand these examples to be covered by article 12 in the Guidelines, and thus fall outside the CEEAG framework. This ambiguity brings unfortunate regulatory uncertainty for new low-carbon projects. Energy Norway would therefore appreciate improved clarity for this section.

VI. Additionally, Energy Norway finds it difficult to comprehend the requirement in article 99 section 4.1.4, which states that "*...aid must not merely displace the missions from one sector to another and must deliver overall greenhouse gas emissions reductions.*" Our understanding of the latter part of this phrase, is that projects must deliver more emission reductions than would normally be reduced through the EU ETS. If that were to be the case, we believe the requirement is too strict and would significantly limit low-carbon projects and the transition to a net-zero society. Regardless, we ask for greater clarification of the article to avoid confusion and ambiguity.

VII. Moreover, Energy Norway asks for further clarification for the definition of "energy from renewable sources" in article 2.4(34). The definition of renewable energy in art. 2.4 (34) differs from the definitions in existing legislation, such as the Renewable Energy Directive (2018/2001), by including a provision on hybrid plants. In addition, it creates ambiguity by stating in the last part of the sentence: "*...but excludes electricity produced as a result of storage systems*". As we understand a hybrid plant is a plant that combines two or more generation technologies behind the meter or plants that combine generation and storage behind the meter. We assume that the intention with the definition in art. 2.4 (34) is to state that electricity produced from a hybrid plant as a result of storage systems does not count as "energy from renewable sources". Yet this is not clear, and we ask for a clarified text in this regard.

Furthermore, a storage system cannot generate energy by itself, but typically stores "something" that is, or can be converted to, electrical energy (i.e electricity in batteries, water in a reservoir or hydrogen in a storage system). Whether or not the energy extracted from the storage is renewable or not, depends on the source of the energy inserted into the storage system in the first place. Energy that is produced using renewable energy should be counted as renewable – irrespective of whether the energy used in production has been through a storage system or not.

We fully support a need to ensure that a plant does not receive support for the same energy twice – both when produced in the first place and then when extracted from a storage system. This challenge should, however, not be “solved” by making changes to the definition of renewable energy that is not in line with current definition in the Renewable Directive and that might have unintended negative consequences for the use of storage systems in connection with generation.

We therefore ask for a clarification of what this definition actually means and what the Commission wants to achieve by making this addition to the definition of energy from renewable sources.

2. Impact of the Taxonomy Regulation on state aid

I. Energy Norway is concerned about article 69 in the proposed CCEAG, referring to using the EU Taxonomy Regulation (2020/852) article 3 and 'Do No Significant Harm' (DNSH) criteria for balancing the weighing effects on trade and competition.⁴

Firstly, we raise concern about the reference to the EU Taxonomy due to fact that the EU Taxonomy is a legislative framework largely under development. Although the Regulation 2020/852 has been adopted since June 2020, there are several Delegated Acts under development with legal basis in the Taxonomy Regulation. **As such, the consequence is increased regulatory uncertainty for projects that might be subject to state aid under the implementation of the CEEAG.**

II. Moreover, the Taxonomy Regulation is a classification system that establish activities to be defined as environmentally sustainable economic activities. The intention is to create greater transparency, which provide investors with enough information to choose where to freely invest their assets. The principle that the Taxonomy is to be used as a tool on a voluntary basis, is further laid down in recital 15 of the Taxonomy Regulation. **However, if the criteria set out in Taxonomy Regulation article 3, will be used as a condition for state aid, that would directly contradict the very nature of the voluntarily principle written in recital 15.** Therefore, we duly propose that the Commission make it voluntary for Member States to choose if they want the Taxonomy applied in the balancing exercise.

3. State aid for clean mobility

I. The Commission's aim of decarbonising the transport sector emissions by at least 90 percent by 2050, is a major challenge that the market alone might not be able to deliver. Hard-to-abate transport sectors such as aviation, maritime and heavy transport will require demand-driven support to decarbonise by 2050. Direct or indirect electrification from renewable sources will be an important tool to decarbonise these sectors. However, decarbonisation in these hard-to-abate sectors is especially difficult since the alternative fuels such as hydrogen, are largely uncompetitive compared to conventional fossil fuels today. Such a market failure would require some sort of state aid to overcome the barrier and reach a commercial and competitive stage. Demand-driven subsidies to flatten out the difference, could be a powerful incentive to increase rapid uptake of alternative fuels. If state aid is necessary, we prefer demand-driven solutions because the market supply react in a more efficient manner to demand changes than visa-versa. Furthermore, demand-driven solutions would provide the market signals for suppliers to increase production, which further facilitates innovation and cut costs with economies of scale. Yet, demand-driven subsidies should be carefully designed and only for a transitional period to avoid overcompensation.

II. Broad and accessible charging infrastructure is a market barrier for rapid uptake of electric light vehicles. State aid might be necessary to overcome this market barrier and would further facilitate to additional value through the network effect. Uptake of electric light vehicles (EV) are increasing fast in European countries, however EVs represent only a small percentage of the overall market. Between 2018 and 2019 battery electric cars increased by almost 130 percent, according to the European Environment Agency.⁵ Nevertheless, the percentage of electric cars (battery & plug-in) of the total European market is still just 3,46 percent. Tighter regulation by CO2 emission targets for manufactures vehicle fleet have kept production of EVs high, yet a large market barrier for uptake of EVs is the lack of charging infrastructure available for the consumer. As such, state aid for the build-out of EV charging infrastructure could be a solution to overcoming this barrier and lead to a network effect, which could rapidly increase the

⁵ <https://www.eea.europa.eu/data-and-maps/indicators/proportion-of-vehicle-fleet-meeting-5/assessment>

uptake of EVs on the road. In addition, we would urge the Commission to investigate other possible barriers such as charging standardisation and data sharing issues.

III. Energy Norway would like to note that it is not the role of the DSO to own, develop, manage or operate charging infrastructure. This is clearly stated as a general rule in article 33 (2) of Directive 2019/944, However, we find it concerning that exemptions from this rule are used more frequently among DSOs in several Member States. We believe the role to own and operate charging infrastructure should be undertaken in a competitive manner, as intended in Directive 2019/944. Energy Norway would still like to stress the important role of the DSOs to facilitate the buildout of new charging infrastructure.

4. Aid for energy infrastructure

I. Energy infrastructure is a precondition for a functioning energy market. Energy infrastructure therefore strengthens the internal energy market and is of common interest. Henceforth, Energy Norway agrees that there are circumstances, where it might be necessary with state aid for infrastructure. The Commission makes reference to that 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. Moreover, the Commission finds that this is particularly true for infrastructure projects having a cross-border impact such as Projects of Common Interest (PCI), as defined by Article 4 of Regulation (EC) No 347/2013.

The TEN-E Regulation is under negotiations, and it is therefore necessary that the adoption of CEEAG takes due reference to on-going negotiations on the TEN-E Regulation before the Commission adopts these guidelines.

Energy Norway also asks for transparency and a legal framework which ensures a harmonised and level playing field where CCEAG does not facilitates for some Member States to be allowed to grant state aid to infrastructure due to a legal set up falling outside the guidelines. It is outmost important that the criteria set for financial support to infrastructure will not distort and prevent different ownership modelling to emerge. This is particularly important to the development of offshore renewable energy where hybrid solutions demand a very coordinated and equal level playing field regulation to create one European energy market.