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Guidelines on State aid for climate, environmental protection and energy 2022

Response

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About the Initiative Erdgasspeicher e.V.

INES is an association of German gas storage system operators and is based in Berlin. With currently 14 Members, INES represents more than 90% of the German gas storage capacities. Hence, INES Members also operate almost 25% of all gas storage capacities in the EU.

1. Introduction

The European Commission consults a draft revision of the Guidelines on State Aid for climate, environmental protection and energy 2022.

With the revision of the guidelines, the European Commission aims at an extension (new fields and technologies) and flexibilization of possible applications of state aid for energy in order to implement the so called “Green Deal”. However, the state aid for energy should be limited to achieving the climate targets and should not distort competition and integrity of the European internal market.

Below, INES comments on the consultation document.

2. Scope

According to Article 107 (1) TEFU, unless otherwise provided in the treaties, any aid granted by a Member State or through State resources in any form which distorts or threatens to distort competition by facilitating certain undertakings or production of certain goods are, in so far it affects trade between Member States, incompatible with the internal market. Despite this fundamental prohibition of state aid, the following aid, among others, may nevertheless be deemed compatible with the internal market pursuant to Art. 107 (3) TEFU:

- a) *Aid to promote the economic development of areas where the standard of living is exceptional low or where a significant underemployment occurs and arears referred to in Article 349 taking into account their structural, economic and social situation;*
- b) *Aid to promote **important projects of common European interest (IPCEI)** or to rectify a serious disturbance in the economic life of a Member State*
- c) **Aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;**

The Energy Aid Guidelines provide guidance in how the Commission will assess whether aid measures to promote environmental protection (including climate protection) and the energy sector, which are notifiable under Article 107 (3) c) TEFU, are compatible with the internal market.

According to section 2.2. (j), this includes, inter alia, aid for energy infrastructures. According to 2.4 (35) (b) (ii) and (c) (ii), this also includes underground storage facilities connected to high-pressure pipelines for gas or hydrogen.

Accordingly, the gas or hydrogen storage industry is directly affected by the guidelines.

3. General compatibility criteria

On the basis of Article 107 (3) c) TFEU, the Commission may consider aid to facilitate the development of certain economic activities in the Union (**positive condition**), insofar as such aid does not adversely affect trading conditions to an extent contrary to the common interest (**negative condition**), to be compatible with the internal market.

Positive condition

- Identification of the economic activity, which is promoted by the aid, of the measure's positive impact on society in general and its relevance to specific Union policies, if any
- Incentive effect
- No infringement of relevant provisions of Union law

INES assumes, that the operators of gas and hydrogen storage facilities (hereinafter referred to as storage system operators, SSO) are to be considered as an economic activity within the meaning of the guidelines. The storage of clean gases and thus renewable energy in particular is of great relevance for the achievement of the Union's energy and climate policy target.

The current demand for the storage of clean gases (e. g. biomethane or hydrogen) is relatively low. Associated prohibitive capacity fees create market entry barriers for storage operators. Against this background, state aid provides necessary positive incentives for the repurposing of suitable plans, which could not take place otherwise due to low market maturity. In this respect, a positive effect of the aid can be assumed.

Negative condition

- Minimization of distortions of competition and trade
 - Necessity (no application, see chapter 4)
 - Suitability (no application, see chapter 4)
 - Transparency
- Avoidance of undue negative effects on competition and trade

- Balance of the aid's positive effects against the negative effects on competition and trade.

INES welcomes, the fact that both operative costs (OPEX) and capital costs (CAPEX) are taken into account in the context of the aid. Aid, in particular an investment cost funding for the repurposing of gas underground storage to hydrogen, can be defined compared to the counterfactual scenario without aid and thus prove appropriateness. Transparency can be established.

Against the background of the needed required expansion of hydrogen underground storage within the European Union, the negative effects on competition and trade appear negligible. Instead, there is a risk that insufficient development, especially of the hydrogen storage infrastructure will hamper the achievement of the climate targets.

4. Specific compatibility criteria

While the cumulation rules set out in chapter 3 apply to all categories of aid covered by the guidelines, specific compatibility criteria for certain aid measures replace the general compatibility criteria and contain more precise provisions.

The aid category "energy infrastructure" (section 4.9) is relevant for gas and hydrogen underground storage facilities. For this aid category, the compatibility criteria "necessity" and "appropriateness" do not apply. Instead, a specific justification for the aid is introduced.

- The European Commission states, among other things, that significant investments a modernization of the energy infrastructure is needed. A modern infrastructure is crucial for an integrated energy market that contributes to meeting the climate targets while ensuring security of supply in the Union. If market participants cannot provide the necessary infrastructure, state aid may be needed to address this market failure and ensure that the Union's significant infrastructure needs are met. Market failure may result from coordination problems or an asymmetric distribution of costs and benefits of positive externalities of energy infrastructure.

INES recommends to clarify that the occurrence of prohibitive capacity process for market-based storage operators after the repurposing constitutes a barrier to entry that should be considered a market failure. This may occur with both repurposing and new construction of clean gas underground storage facilities.

INES recommends to clarify in the Rationale that repurposing of gas storage facilities to hydrogen should be considered as “modernization” of energy infrastructures.

When examining the compatibility of aid measures for underground storage, INES recommends that care should be taken to ensure that regulated network tariffs are not set as a requirement. Otherwise, storage operators organized in a market economy framework would be systematically disadvantaged in terms of state aid compared to regulated storage operators, although they have to overcome the identical market barriers. In this context, it should also be noted that a claw-back mechanism may cause significant uncertainty for the predictability of a potential business activity in the clean energy storage market and increases market entry barriers rather than reducing them.

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