

ENTSO-E RESPONSE TO THE EUROPEAN COMMISSION'S PUBLIC CONSULTATION ON THE REVISION OF THE STATE AID GUIDELINES

Final Draft | 2 August 2021

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Introduction

ENTSO-E welcomes the revision of the Guidelines on State aid for environmental protection and energy 2014-2020 ("EEAG") and recognizes the need both to enlarge the scope of the Guidelines to new areas and technologies that can deliver the Green Deal and to make the compatibility rules more flexible, as no one-size-fits-all solution would be suitable to support new investments across the range of sectors covered. We also fully support the EC's acknowledgement that flexibilisation has to be accompanied by safeguards to avoid possible market distortions, discrimination, or overremuneration. Indeed, the sheer scale of investments necessary to reach the Green Deal objectives means a number of novel and ambitious measures will be deployed over the next nine years, which could have significant adverse effects on competition and fairness if not harnessed properly. The decarbonisation policies need to be implemented taking a "whole system" perspective, such that maintaining security of supply and safe system operations do not come at an exorbitant cost for tariff payers.

The EEAG review should mainly aim at ensuring an agile and fit-for-purpose framework to attract the investments needed for the decarbonisation process. It is essential that this framework is updated in light of the recent legislative, market and technology developments and that the notification & application process is streamlined. More concretely, we fully support the Commission's push for a stricter alignment between the new State Aid Guidelines and recent legislation in the electricity sector, particularly EU Regulation 2019/943 and EU Directive 2019/944. ENTSO-E also recognizes the need for the revised guidelines to provide an enabling framework supporting the implementation of key measures under the recently proposed Fit-for-55 Package.

Regarding the EC's proposal to decarbonise security of supply (Chapter 4.8), ENTSO-E and European TSOs would like to make several proposals which we consider to be essential to ensure that the decarbonisation targets can be achieved without any uncertainty, delay, or undue harm to the safe operation of the interconnected system.

ENTSO-E General Remarks

The CEEAG is a crucial instrument in supporting Member States in their efforts to meet climate and energy targets, including resource adequacy, while addressing the market distortions that may result from granting subsidies.

In contrast to the statements in the accompanying explanatory document, it is ENTSO-E's view that the proposed CEEAG revision goes further than the two stated building blocks (namely enlarging the scope of the Guidelines to cover new sectors, technologies, and aid instruments and making the compatibility rules more flexible). With the enlarged scope and flexibility for member states interpretations, it is important to maintain trust and stability, particularly through efficient procedures and transparency.

With regard to capacity mechanisms, Regulation (EU) 2019/943 on the internal electricity market regulates precisely under what conditions and with what design principles (Art. 21 - 27) capacity mechanism can be implemented, including specific requirements on emission limits and technology neutrality.

As a result, the introduction and operation of capacity mechanisms (including strategic reserves) is only permitted under strict conditions and as a "last resort" measure to ensure security of supply in a Member

State. It therefore remains crucial that the combined changes in the CEEAG still allow capacity mechanisms to adequately guarantee their objective of common interest, i.e. resource adequacy. If the requirements for such capacity mechanisms would be interpreted too restrictively in the CEEAG this might result in a paradox where the capacity mechanism cannot serve its initial purpose anymore. But instead, well-designed markets providing long term price signals are needed for promoting the development of technologically advanced solutions with low environmental impact which allow to cope with the system requirements arising from the decarbonisation process and in particular with the increasing penetration of variable renewables.

While supporting the EC ambition toward the energy transition, ENTSO-E notes the introduction of several points in the CEEAG with an increased focus on the green character of capacity mechanisms going further than the emission requirements set in Regulation 2019/943 and would like to underline the importance of allowing capacity mechanisms to actually ensure resource adequacy in realistically achievable manner with the technical means available now, during the energy transition and beyond.

Moreover, ENTSO-E considers that the objective of streamlining and improving flexibility of State aid rules can only be achieved by clarifying the exclusion of the state aid nature of market-based competitive bidding procedures which are able to provide efficient investment incentives through long term price signals and to support the shift towards a low-carbon economy.

In addition, services procured by TSOs according to the rules in the sectoral legislation such as electricity Network Codes and Guidelines and which are implemented for complying with specific requirements contained therein, should not be included in the scope of the CEEAG.

Furthermore, ENTSO-E notes that the consultation requirements (sections 4.1.3.4 and 4.8.4.4) should allow the Member States to respect their own legislative processes. One such case concerns the consultation length (e.g., 8 weeks), which may require separate procedures.

Whereas both predecessors of the CEEAG mentioned an end date¹ and notwithstanding point 415 of the CEEAG which includes a rule on future revisions, ENTSO-E suggests that having an explicit end-date would offer greater regulatory certainty, while allowing potential amendments which may be needed as a result of changing market circumstances or new regulation and policies.

¹ The EEAG 2014 – 2020 is applicable until 31 December 2020 – eventually prolonged by one year – according to point 246 of the EEAG 2014 – 2020 and 31 December 2014 was mentioned as the end date of the EEAG 2008 – 2014 (see point 203 sentence 1 of the EEAG 2008 – 2014)

ENTSO-E's Position on Main Amendment Proposals

Chapter 4.1 Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy (Points 73-113)

Taking a holistic energy system integration approach (point 83 and 102)

ENTSO-E welcomes the proposal by the European Commission to extend the evaluation of the impact of the behaviour of a beneficiary of such aid to the stability of the transmission network or the build-out of the electricity grid. The proposed point 83 lit. e) and point 102 CEEAG can be taken as indications that the European Commission takes into consideration the effect a measure on the reduction of CO₂ emissions and/or renewable energy has on the energy network when assessing the eligibility of such a measure. Thereby the European Commission translates the principle of "energy system integration" also to the compatibilities rules applicable to national aid measures in the area of climate, energy and environment. We highly support the European Commission for taking this step as it does not only put the aid measure itself but also the beneficiary of the measure in a more holistic perspective by incorporating also its impact on the energy system as such, related to the curtailment of renewable electricity or network stability.

In order to strengthen the overall principle of Energy System Integration also within the CEEAG it should be ensured that subsidised projects contributing to greenhouse gas reductions or to an increase of renewable energy should not put disproportionate burden on Transmission System Operators or create bottlenecks in the transmission system by incentivising the beneficiaries of such aid to contribute to the stability of the grid or to security of supply issues, for instance by participating in re-dispatching measures.

Against this background we welcome the proposal of adding "issues related to network stability" (point 83 lit. e) CEEAG) when assessing the eligibility of decarbonisation measures according to point 82 ff. CEEAG. We understand that point 83, which refers to decarbonisation measures, also includes measures to support the deployment Renewable Energy Sources. Yet, we would first point out that the assessment of the eligibility should be made more explicit with regards to the measures that specifically target renewables. Secondly, instead of phrasing the measures of point 83 lit. a) – f) only as positive indicators and even putting some of the responsibilities for setting-up counteractive measures to the Member State level (see footnote 55 of the CEEAG), it should be guaranteed by the compatibility rules of the CEEAG instead that any decarbonisation or RES measure avoid resulting in grid stability issues, incentivise the build-out of transmission grid where compatible with the system needs and/or incentivises supported RES to participate in mitigation measures, such as re-dispatching (ex-post).

Inclusion of other objectives (e.g. Marine Ecosystem protection)

Additional environmental objectives, other than decarbonisation, may indeed become a driving factor for cross-border support schemes. This is particularly relevant for further deployment of offshore renewables and infrastructure, whereby marine ecosystem preservation could be a motivation for sustainable building and installation, improved coordinated maritime plans, co-existence of uses, and compact infrastructure.

Incentives for awarded units to participate in Frequency and non-Frequency Ancillary Services

ENTSO-E supports the requirements raised in point 104 that "*beneficiaries should remain exposed to price variation and market risk [and] ... should not be incentivised to offer their output below their marginal costs*

and must not receive aid for production in any periods in which the market value of that production is negative". ENTSO-E believes it is important that support mechanisms are designed in such a way that supported RES units are incentivised to react to spot market price signals and to correctly forecast their feed-in. Going beyond that we recommend adapting support schemes to incentivise awarded units to participate in frequency and non-frequency ancillary services. Flexibility is a key resource given the rising share of weather-dependent RES. As the electricity generation from conventional power plants will decrease, renewable power plants must actively contribute to security of supply measures. Mostly, they are technically able to do so, however in some cases subsidized renewables might not be incentivized to provide flexibility to the system. For example, subsidies based on metered generation (feed-in-payments) do not incentivize the provision of downward reserve due to the loss of subsidy in case of activation.

Cross border support (point 82)

ENTSO-E welcomes the clarification raised under footnote 53 (point 82) that *"the Commission will not generally require measures to be opened across borders, although this can help alleviate competition concerns"*. Cross-border support schemes, if well designed, may also be well suited to address new challenges that require closer bilateral or regional coordination (e.g. deploying offshore hybrid assets) and can lead to a more efficient distribution of renewable power capacity as whole. However, differing regulatory frameworks across countries can further exacerbate possible distortions to competition, for which distributional effects may need to be limited. Careful design and transparency of such schemes is therefore needed to avoid unintended incentives and to guarantee a level playing field.

Furthermore, any requirement on Member States has to carefully consider several limiting factors such as insufficient interconnection capacity between the concerned countries and the lack of certainty on the physical import or impact of an installation on the power system of the contributing country. Given that Article 5 of Renewable Energy Directive Recast (2018) notes that by 2023, the European Commission will evaluate the implementation of cross-border support schemes and may introduce an obligation for Member States to partially open participation in their support schemes from RES producers located in other Member States, further clarification in the CEEAG would be welcome. Consequently, we consider that the revised RED II should also take into account this clarification.

Chapter 4.8. Aid for the security of Supply (Points 284-327)

Definition of Terms (Point 18 (47))

The draft CEEAG defines the term 'interruptibility scheme' for the first time. However, the proposed definition is not consistent with the nature of such services: interruptibility schemes in fact are aimed at guaranteeing the system security and not the security of supply and they are properly qualified as a Defence system under the scope of the Regulation (EU) 2017/2196 establishing a network code on electricity emergency and restoration (see paragraph below). Moreover, the definition proposed in the draft CEEAG is broader in scope than previously used in forgoing state aid cases such as SA.43735 (related to interruptibility schemes in Germany) or SA.48780 (related to Interruptibility schemes in Greece) used the term much more narrowly, limiting it to demand side response. A broader definition of the term as proposed in the draft CEEAG would include *Special Network Operating Resources* used by TSOs to keep n-1 safety in events of actual failures of operating resources. If, in addition, Article 22 of Reg. (EU) 2019/943 applied to interruptibility schemes, as implied in point 325, it would impair TSOs capability to maintain system safety.

Considering that ENTSO-E does not agree with the extension of the scope of the CEEAG to interruptibility schemes for the reasons stated in the following paragraphs, ENTSO-E recommends removing the definition 18(47) since it would be redundant in the CEEAG text. In any case, and for the sake of clarity and completeness, ENTSO-E would like to remark that the correct definition of “interruptibility scheme” should be the following, in line with the description provided;

“interruptibility scheme’ means a measure designed to contribute to defend the dynamic and static stability in the electricity system or address short term network security problems-by interrupting load”

Furthermore, when considering the applicability of criteria used for assessing the compatibility of adequacy measures, the distinction between adequacy and congestion management measures should be respected. In this regard, the following legal provisions should be taken into account:

- Article 2(22) of Regulation 2019/943 defines capacity mechanism as a *“temporary measure to ensure the achievement of the necessary level of **resource adequacy** by remunerating resources for their availability, **excluding measures relating to ancillary services or congestion management**”*;
 - Thus, it is clear that network reserves, under which resources are kept online to ensure sufficient resources for congestion management, are not capacity mechanisms and should be treated separately;
 - Moreover, Chapter IV of Regulation 2019/943 is entitled 'Resource adequacy' and does not deal with congestion management, which is, in turn, covered by Chapter II, in particular by Article 13 - 'Redispatching';
- Article 3(68) of Regulation 2017/1485 (System Operation Guideline) defines 'adequacy' as *“the ability of in-feeds into an area to meet the load in that area”*, while network issues are covered by the wider term 'operational security' – defined in Article 3(1) as *the “transmission system's capability to retain a normal state or to return to a normal state as soon as possible, and which is characterised by operational security limits”*;
- Article 2(1) of Regulation 2019/941 (Risk Preparedness Regulation) defines 'security of electricity supply' as *“the ability of an electricity system to guarantee the supply of electricity to customers with a clearly established level of performance, as determined by the Member States concerned”*; then, Article 4 of that Regulation refers to rules on adequacy, i.e., Chapter IV of Regulation 2019/943, which suggests that security of supply is understood with a focus on adequacy.

The above shows that the measures designed and implemented by Transmission System Operators are subject to a complex legal framework, and terms must be used precisely to cover the right measures within the scope of the respective regulatory requirements. In order to ensure regulatory quality and certainty, we invite the Commission to reconsider the terminology used in the draft CEEAG, so that appropriate compatibility criteria can be applied to the respective measures where they are considered to constitute State aid.

Extension of application of Capacity Mechanism rules to all Security of Supply measures (285, 321(a), (b), (c),)

According to point 285, the application of the guidelines is extended to cover interruptibility schemes and network reserves too, with the effect of enlarging the scope of application of the Regulation (EU) 2019/943 to measures other than capacity mechanisms. Besides the fact that such a result should not be achieved through a State Aid Guidelines revision, this expansion from our point of view is critical especially with regards to points 321 and 324 (described further below).

Network Reserves

As regards the differences between network reserves and strategic reserve related to balancing, these can be assessed based on two main criteria. With regards to the type of market failure being tackled, while network reserves address the lack of economic feasibility of resources needed in specific parts (e.g., nodes) in the system, strategic reserves on the other hand deal with the feasibility of resources that can in principle be placed anywhere in the system. Activation purposes should also be considered as a key source of difference, since the former aims primarily at solving congestions in the grid, while the latter covers demand not covered by resources available in the market.

Point 321 (a) reads: *"The resources of the measure are to be dispatched only if the transmission system operators are likely to exhaust their balancing resources to establish an equilibrium between demand and supply"*. This requirement cannot be applied to any measure that aims to resolve grid congestions or ensure voltage stability. Balancing resources, in turn, are only activated to balance demand and supply but without considering the status of the grid loading and thus have a completely different purpose to network reserves.

The application of **point 321(a)** is even critical with regards to strategic reserves: it is doubtful whether it is appropriate to aim for full activation of balancing reserves before activating capacity reserves. This would mean that there is no backup capacity left to cover unpredictable power shortages due to power plant outages or forecast errors of renewable energies or loads. In this context it is important not to overlook the fact that often for capacity reserves there may be longer lead times for activation (up to several hours before real-time), which is clearly longer than what is required for the more demanding balancing reserves (15 min timeframe or faster). Equally important is the fact that balancing reserves are dimensioned for the entire synchronous area and are thus a concern to more than just one TSO (while other SoS measures are national in scope). This mismatch, both with respect to timeframes and geographic scope, further highlights the need to distinguish between adequacy measures and other activities ensuring security of supply in a shorter term.

Another limitation holds for **point 321 (b)** which aims to set a lower price limit "at least at the value of lost load or at a higher value than the intraday technical price limit, whichever is higher" for the imbalance price for periods with an activation of security of supply measures. This is reasonable for strategic reserves, which aim to achieve load coverage, but not for network reserves. There is no link between the amount of the system imbalance (which shall be punished by high imbalance prices in critical situations) and the activation of network reserves, which is necessary to resolve grid congestions. In fact, resolving grid congestions is a TSO task and balancing responsible parties (BRPs) have no influence on the necessary measures. In this sense, it should be generally rejected to allocate the activation costs to the market participants who contribute to the need for network reserves as **point 324** stipulates. The proposal "For example, this may be achieved by allocating the costs of a security of supply measure to electricity consumers in periods of peak electricity demand" does not fit to situations with grid congestions, as they can also occur in other

situations (e.g. high wind and low demand in Germany). Additionally, it is also not possible to attribute the output of network reserves to BRPs through the imbalance settlement mechanism as proposed in **point 321 (c)**.

Accordingly, we recommend not to apply points 321 and 324 to network reserves. Point 321(a) also must not be applicable to strategic reserves as it would limit the margin of error in critical situations.

Interruptibility Schemes

The purpose of interruptibility schemes in particular is to respond to unexpected events and severe emergency situations (failures of grid elements for instance, sudden generation trips, severe grid transient, transient overload on lines) and maintain n-1 security, regardless of generation adequacy conditions. As an example, this service has been activated in order to mitigate the consequences of the Continental Europe synchronous area system splitting occurred on 2021 January 8th, when the transition to emergency state (drop of frequency below 49.8 Hz) was contrasted by tripping interruptible resources. Considering their characteristics, function and mode of application, interruptibility schemes are already governed within the scope of Regulation (EU) 2017/2196 establishing a network code on electricity emergency and restoration² and should therefore not fall within the scope of these Guidelines.

In any case, measures designed not to address adequacy issues, but emergency situations, such as interruptibility schemes as described above, should explicitly be exempted from the application of these guidelines and references to those measures should be removed from the guidelines.

Eligibility of aggregation of small units (302)

Point 302 states *"The aid measure should be open to all beneficiaries or projects technically capable of contributing efficiently to the achievement of the security of supply objective. This includes generation, storage and demand response, as well as the aggregation of small units of these forms of capacity into larger blocks"*.

It must be stressed that TSOs managing adequacy measures must be able to verify the effective available capacity of these small resources, in order to guarantee the security of supply and of the system.

Additional constraints on Gas, other fossil fuels (320, 325, 326)

According to **points 320 and 325** the CO₂-emission requirements as defined by Art. 22 of Regulation (EU) 2019/943 would be extended to network reserves and interruptibility schemes. This proposal would limit TSOs' ability to cope with grid congestions as it would limit the running hours of network reserves used for congestion management.

If the emission requirements were applied, the permissible operating hours per year and plant would be limited for existing plants in the grid reserve from 2025. The resulting restrictions on operating hours may prevent the reasonable use of the grid reserve beginning in July 2025.

² For example, Article 15 mandates that the System Defence Plan contains a scheme for automatic low frequency demand disconnection (LFDD).

It must be ensured that individual plants in the grid reserve also remain operational without further restrictions to ensure system security. The emission requirements should therefore not be extended beyond capacity mechanisms pursuant to Art. 22 of Regulation (EU) 2019/943.

In view of **point 326**, imposing additional requirements to support measures that incentivize natural gas-based generation, ENTSO-E would like to refer to its general remark in the introduction. Notwithstanding the importance of avoiding a lock-in of gas-fired energy generation as far as possible in view of achieving the EU's climate targets, all kinds of capacities respecting the specific emission limits set by Regulation 2019/943 should be eligible for support if needed to ensure security of supply at a reasonable cost coherently with the technological neutrality principle contained in the Regulation. In fact, the criteria introduced by the Regulation were already aimed at ensuring that possible negative environmental externalities are adequately addressed. Considering all the above, we would like to stress once again that the application of State Aid Guidelines must avoid any overlap with the provisions set in Regulation 2019/943, since they pose a risk of incompatibility and legal uncertainty.

Impact of Capacity Mechanisms on the incentives to invest in interconnection capacity by influencing the level of Congestion Income (323)

Increasing the interconnection rate of the EU's electricity systems is obviously critical in integrating more intermittent renewable energy sources in the energy markets, while at the same time ensuring security of supply. However, ENTSO-E is concerned that a strict interpretation of this clause might result in not allowing any market-wide capacity remuneration mechanism to be implemented within the EU. There are several drivers behind investments in new interconnection capacity (social welfare, system security, RES integration), of which congestion income is just one element. It therefore seems inadequate to see the potential congestion income decrease in isolation as a distortion.

Furthermore, a market-wide CRM may provide investment incentives to new or existing capacities of different technologies, to the extent the market considers them to be efficient. A market-wide CRM as any other measure that has an impact on the capacity mix (and by extension the clearing price), might therefore potentially affect congestion revenues for existing or new interconnectors. However, such impacts are the simple consequence of having investments in the capacity mix and it should not be considered as a distortion.

Therefore, ENTSO-E would like to ensure that it is not the intention of the EC to prevent the implementation of any market-wide capacity mechanism in view of point 323 (b).

Cost allocation for Security of Supply measures (324)

In addition, **point 324 states**: *"To avoid undermining incentives for demand response and exacerbating the market failures that lead to the need for security of supply measures, and to ensure the security of supply intervention is as limited in size as possible, the costs of a security of supply measure should be borne by the market participants who contribute to the need for the measure. For example, this may be achieved by allocating the costs of a security of supply measure to electricity consumers in periods of peak electricity demand"*.

In principle, peak period consumers should pay more in order for the measure to expose consumers to the correct price signals, but the measure should be in general financed by all consumers who benefit as a whole from the adequacy measure.

This requirement is also impossible to implement in practice with regard to congestion management measures or emergency measures aiming at guaranteeing the security of the system. According to this requirement, those generators or consumers would have to bear the costs of the measure that cause the congestion. This would contradict the intention of the zonal market model, according to which generation and consumption are only allocated on the basis of their price bids without taking the network condition into account. In fact, market actors usually cannot know that they are causing congestions due to their lack of knowledge of the network condition. Therefore, the proposed solution does not make sense in the area of congestion management or grid safety emergency measures, since those events can also occur under other conditions than just security of supply.

As for the resource adequacy measures, ENTSO-E understands that the correct incentives should be implemented to ensure that the SoS intervention is as limited in size as possible. However, at the same time energy consumers should be charged on a fair and predictable basis. If market actors are charged in function of their consumption in periods of peak demand, they should at least be able to monitor and control their consumption during such periods as it does not seem adequate to implement pricing incentives to which a market actor cannot (yet) react proactively. Therefore, the successful roll-out of smart meters is a prerequisite for implementing a cost allocation mechanism in function of peak demand, so that market actors have the opportunity to shift their energy consumption from times of peak demand to periods of surplus production without inconvenience or loss of productivity.

Transferability of CRM obligations (322)

According to point 322, *'Member States must ensure that capacity obligations are transferable between eligible capacity providers'* This requirement is already included in Regulation 2019/943, but the Regulation excludes strategic reserves. Article 22 (3) reads *"In addition to the requirements set out in paragraph 1, capacity mechanisms other than strategic reserves:(...) (c) must ensure that capacity obligations are transferable between eligible capacity providers."*

From a regulatory point of view, Regulation (EU) 2019/943 governs precisely under what conditions capacity mechanisms can be implemented, including specific requirements on the transferability of capacity obligations as referred to above. Changes in the CEEAG should therefore be aligned with this regulation to avoid legal ambiguities.

Also from a market perspective, it seems fair to exclude "out-of-market mechanisms" from the scope of this requirement as foreseen in Regulation (EU) 2019/943, as the number of authorized market participants is too small to organize, for example, a secondary market or other transferability mechanism for out-of-market capacity. In addition, there would be disproportionate operational complexity to implement a transfer mechanism. What is more, in the case of network reserves, the location of a plant is relevant, so that capacity obligations cannot be transferred at will with regards to the geographic location.

Chapter 4.11 Aid in the form of reductions from electricity levies for energy-intensive users

According to **point 357**, aid should be limited to sectors that are at a significant competitive disadvantage due to the charges eligible for aid and are in danger of relocating outside the Union. In addition to energy

intensity, the system efficiency of companies should also be taken into account and a reduction in network charges and surcharges should also be possible for these companies or operators of storage facilities.

Chapter 4.12 Aid for coal, peat and oil shale closure

The closure of the coal and oil power plants could induce constraints on the network. It shall continue to be possible for the TSOs to assess the relevance of the power plants for the operation of the system and held the power plant in a grid reserve to ensure the secure operation of the grid if necessary.