

CEE Bankwatch Network comments on
Guidelines on State aid for climate, environmental protection and energy 2022

General comments

1) Support for all elements of the Green Deal, including on biodiversity, must be built into the CEEAG

Not everything which is legally allowed to be built should be supported by State aid. Only those investments which actively contribute to the Green Deal, including by supporting the EU's Biodiversity Strategy, may be supported. Overall, the draft CEEAG document refers much more to climate objectives than to biodiversity objectives, but these twin [emergencies](#) need to be tackled together.

a) Gas is a fossil fuel like any other and must no longer be supported by State aid

Throughout the draft CEEAG document, gas is treated differently than other fossil fuels, with its own paragraphs and conditions. There is no scientific, nor legal, justification for this and it needs to be treated just as any other fossil fuel.

Already in 2016 Oil Change International [calculated](#) that no more fossil fuel infrastructure can be built if we are to meet the goals of the Paris Agreement. The potential carbon emissions from the oil, gas, and coal in the world's operating fields and mines would already take us beyond 2°C of warming, and even excluding coal, the reserves in currently operating oil and gas fields would take us beyond 1.5°C. This message has since been reinforced by the International Energy Agency in its [2050 Net Zero](#) pathway analysis.

The think tank [Artelys](#) has also established that even from a security of supply point of view, the EU does not need more gas infrastructure – it already has what it needs to meet demand. In addition, the European Union must drastically reduce its gas over the next 30 years if the worst impacts of climate change are to be avoided.

EU legislation is taking too long to catch up with this need to stop building new fossil gas infrastructure, and there is a serious danger of more stranded assets which we can ill afford. The [BRUA Phase 1 gas pipeline](#) in Romania is perhaps the priciest example of recently built, [EU-supported](#) gas infrastructure that looks likely to be stranded.

Moreover, every Euro invested in gas is money that is not being spent on energy savings and renewable energy. For these reasons, it is imperative to stop State aid supporting gas investments.

In some parts of the draft CEEAG, gas has been given its own dedicated paragraph, unjustifiably setting it apart from other fossil fuels. Attempts have been made to set some conditions on aid for gas, but the examples given regarding binding pledges to implement CCS/CCU or use renewable gas show just how ineffective this would be.

All of these are for now still in the realm of wishful thinking, and have been for many years. It would be highly impractical for the Commission to approve aid on condition of their implementation, only to find 15-20 years later that this did not materialise. What would happen then? Is the Commission really going to go back, check compliance and order the recovery of the aid? This seems highly unlikely. Support for gas needs to be clearly removed.

b) High-biodiversity-impact renewable energy

The EU's nature protection legislation has narrowed the space for building new greenfield **hydropower** plants, but several member states are nevertheless planning new projects, usually in areas of high impact on nature. For example the [Mokrice](#) plant on the river Sava in Slovenia would endanger several protected fish species, while the Kosinj/Senj II complex in Croatia would impact both Natura 2000 sites and require the resettlement of local people, but its [impacts have not been properly assessed](#).

The draft CEEAG proposes a 400 kW threshold for feed-in tariffs for electricity generation, decreasing to 200 kW in 2026. This is an improvement on the current 500 kW, but still allows the smallest hydropower plants – that make the least contribution to energy generation but still result in widespread environmental damage – to benefit from feed-in tariffs. [Dabrova Dolina](#) in Croatia is an example of how even small hydropower plants can be damaging to precious rivers in Natura 2000 areas and yet still receive feed-in tariffs.

At the same time, the EU is struggling to reach its biodiversity goals. For example, despite one of the key 2020 targets being that 50 per cent more species assessments are in favourable or improved conservation status, only 6 percent of species are showing improved trends while one-third are still deteriorating, and the target to restore 15 percent of degraded ecosystems was also not reached. In reality, the exemptions in Art. 4 of the Water Framework Directive (WFD) are over-applied and endanger the achievement of the Directive's goals. As the EC's 5th WFD implementation report put it in February 2019:

“The exemptions foreseen in Article 4 of the WFD currently cover around half of Europe’s water bodies. This mainly concerns natural water bodies, but increasingly also heavily modified and artificial water bodies, next to new physical modifications. Whilst the justifications for such exemptions have overall improved, their persistent wide use is an indicator of the significant efforts still needed to achieve good status or potential by 2027.”

For 2030, the European Commission has pledged in the Biodiversity Strategy to ensure the restoration of at least 25,000 km of rivers into free-flowing rivers by 2030 through the removal of primarily obsolete barriers and the restoration of floodplains and wetlands. Thus it makes little sense to incentivise the construction of new barriers, including hydropower plants, at the same time as trying to achieve this target.

Bioenergy is currently causing massive controversy within the EU and it is unfortunate that the EEAG revision is taking place before the new Renewable Energy Directive update is concluded.

Bankwatch's 2019 analysis of draft NECPs shows that Central and Eastern European (CEE) countries overall plan logging and the use of biomass above sustainable levels. Estonia cuts down 30% more forests than grow back for biomass use and pellet production for export to other EU countries as a source of renewable energy is causing increased logging, including in Natura 2000 sites. In Bulgaria 40% of households are using wood for heating in low efficiency stoves with significant air quality impact. Similar issues happen in Czechia and Poland where projected increase of biomass use will lead to imports of wood, and in Slovakia where logging grew by at least 75 per cent from 1990 to 2015, leading to a 6% loss of forest cover. This includes habitat and ecosystem destruction from deforestation, as well as the construction of roads to facilitate the extraction of timber.

Burning wood biomass emits significant amounts of CO₂. In fact, at the point of combustion, it emits more than fossil fuels. The [Joint Research Centre's 2021 report](#) on this issue states (p.87) that “Overall, in 2015, EU emissions from woody biomass burning ranged from 350 to 380 MtCO₂. (...) it can be estimated that in 2015 the equivalent fossil-based GHG emissions, avoided by the use of bioenergy, would have been in the range of 250-270 MtCO₂”. However, unlike with coal or gas, traditionally it has been assumed that these will

be removed from the atmosphere again by new growth of replacement trees, so biomass GHG accounting is done under Land Use, Land Use Change and Forestry (LULUCF), not in the energy sector.

However, the JRC report concluded that most forest biomass produces more greenhouse gas emissions than coal, oil and gas and that in 23 out of the 24 scenarios examined, biomass had a negative impact on climate, biodiversity, or both. The most important finding (p.9) was that only “fine woody debris” can still be burned and cause equal or fewer emissions than fossil fuels within a 10-20 year timespan. This means that even in cases where replacement of the burned trees takes place, it is not realistic to expect that forest biomass will be renewed over a timespan which is relevant for addressing carbon emissions.

The draft updated Renewable Energy Directive text published earlier in July 2021 does not address this issue. It protects only primary forests, which account for only three per cent of the EU’s forests and leaves 97 per cent eligible for burning. It also does not address the emissions issue at all. For this reason, at least [primary woody biomass](#) must not be supported by state aid at all.

Biogas, while making a valuable contribution at a small scale, at a large scale threatens biodiversity by driving demand for monocultural high-input crops such as corn, thus threatening to replicate the controversy around crop-based biofuels, land use and biodiversity. This makes it senseless to incentivise large-scale biogas.

2) Compliance with EU law and policies must be better checked

We very much support that compliance with EU law, including environmental law, must be one of the criteria by which state aid measures are assessed. The whole European Commission needs to work together to coherently promote and enforce EU environmental legislation, with DG Environment consulted where relevant in order to achieve this. Competition policy cannot alone steer environmental enforcement, but it can and must certainly contribute to it, by making sure that environmentally harmful and illegal activities do not receive aid. The European Parliament has recently underlined this link by [voting to end all fossil fuel subsidies by 2025 and all other environmentally harmful subsidies by 2027](#).

Yet experience with cases like the [Sofia waste cogeneration project](#) (see below) suggest that too often, DG COMP is taking the member state’s word for it that a project is in line with EU policy, without carrying out independent checks. It is not clear whether DG Environment is consulted about planned aid measures or not.

There is no clear provision by which State aid for illegally permitted projects is systematically halted or prevented, and this needs to be changed in the new CEEAG. While the EU’s environmental acquis is in any case binding for energy projects, support schemes still award support for projects which contravene the acquis. This particularly applies to hydropower. For example, [the EC in 2015 opened a case against Romania for failure to apply the environmental acquis to small hydropower plants](#), but there is no mechanism in place to ensure that the affected plants no longer receive incentives. The 2020 EC [letter of formal notice to Croatia](#) on inadequate application of the Habitats Directive in the case of wind farms shows that this also applies to other renewables.

Just as Art. 3 of the RED rightly states that *“Member States shall grant no support for renewable energy produced from the incineration of waste if the separate collection obligations laid down in that Directive have not been complied with”*, the EEAG also needs to clearly stipulate, that no incentives for hydropower may be provided in countries which have not achieved the goals of the WFD, even for very small plants.

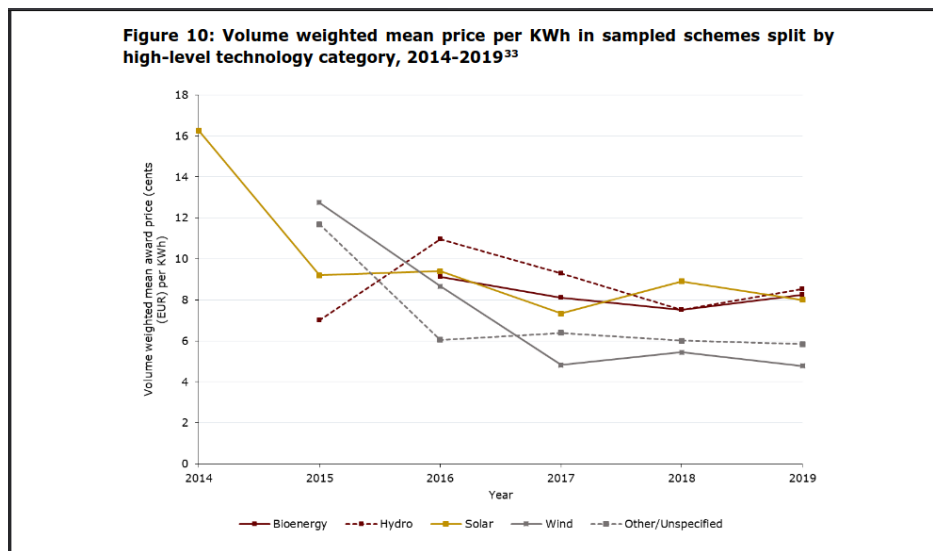
Likewise, in order to ensure joined-up legislation, and to make sure that renewable energy projects developed in breach of the EIA, Birds or Habitats Directives, do not receive incentives, the EEAG needs to clearly state that any energy/environment projects or sectors subject to EC infringement procedures, ongoing investigations that may lead to infringement procedures, or national level court cases related to the above Directives may not receive incentive payments until the issue is resolved.

Likewise, clearer instructions are needed on the need to recover aid granted to projects where the operator is later found not to have complied with EU law, as there is currently no automatic mechanism in place ensuring that this will happen.

3) State aid must have added value in terms of technology development. Technologies where State aid no longer brings benefits in terms of helping them to mature and decrease prices should no longer be assisted, particularly when they also have high impacts on biodiversity, as in the case of hydropower and bioenergy, above.

We understand that the stated goal of EU renewable energy policy is to maximise the share of renewable energy as long as it is in line with EU legislation and the sustainability criteria set out in the Renewable Energy Directive II, and thus the Directive does not distinguish between fully mature technologies and those whose price is still dropping. However the cost to the public of continuing to support mature technologies needs to be considered. As the volume of installed renewables increases, the per-unit support must decrease considerably, otherwise the costs become unbearable and cause public opposition.

The Commission's [evaluation](#) of the EEAG shows that cost reduction has happened with solar and wind, but not with hydropower and barely if at all with bioenergy. Given that solar and wind make up the vast majority of new supported installations, their role is decisive in the affordability of aid. But even for less supported technologies, the question still arises of until when do we support a certain technology via State aid?



In our opinion, State aid should generally be phased out for mature technologies unless they offer outstanding social and environmental benefits compared to other, cheaper technologies on the market. Neither hydropower nor biomass electricity generation can be said to offer such benefits, as they have a high negative impact on biodiversity.

4) Avoid the use of vague terms not based on EU legislation or policy

In several sections the vague and undefined phrase “low carbon” or “low-carbon” appears. Low carbon and zero carbon are not the same, or are low carbon and renewable. Low carbon infrastructure is usually understood as including fossil gas, which must no longer be supported by State aid. This vague expression must be removed from the CEEAG, and renewable technologies must in no way be mixed with non-renewable ones.

Similarly the text consistently separates “the most polluting fossil fuels” from gas. As stated above, this is unacceptable as gas use also needs to be cut drastically, but it is also highly arbitrary and not based on EU legislation or policy.

5) Cogeneration/district heating is still a loophole for unsustainable technologies

In the current EEAG and draft CEEAG, district heating/cogeneration serves as a loophole for waste-to-energy incineration and gas projects, allowing them to receive State aid even though they are not renewable energies. Most incineration of waste involves fossil-fuel-based plastic rather than the biodegradable fraction of waste, so would otherwise not qualify for support. In addition, the Renewable Energy Directive states that Member States which have not fulfilled their separate collection obligations cannot incentivise renewable waste-to-energy projects, so it would be logical that they also cannot incentivise non-renewable ones. It is unfortunate that the CEEAG revision takes place before the new version of the Energy Efficiency Directive is agreed on as this issue, along with wider questions about the real relative efficiency of cogeneration, needs to be addressed in the Directive.

Likewise, no preference is given to more modern low-temperature district heating networks known as 4th Generation district heating in this draft, which should be changed if the CEEAG is to represent an advance on the EEAG.

6) Community energy must be more clearly supported

The development of community-owned renewable energy facilities is a crucial part of the energy transition, generating energy near to where it is needed, promoting public participation and benefits from the transition and helping to ensure the environmental and social acceptability of renewable energy facilities. But according to the current EEAG and draft CEEAG, community-owned energy projects face the same rules on auctions and premiums as other, larger actors. Participating in an auction requires significant expertise, experience and access to capital, which smaller actors do not have to the same degree as larger renewable energy developers.

A [report](#) developed under the Aures II project looks at how three member states have tried to address this issue and provides recommendations on how the issue can be approached, including setting specific auction rules for renewable energy communities or exempting them from auctions, while helping to avoid pitfalls such as participation by entities which are not really community energy projects. If the European Commission is serious about assisting community energy to develop across the EU, and not just in a few of the more advanced states, it needs to cover this issue in the CEEAG.

7) Public consultations need to be held for more aid measures

We welcome the introduction of an obligation to hold public consultations on planned aid measures and believe this can help with public acceptance as well as the effectiveness of the measures. However the criteria proposed for such consultations are too restrictive, eg. only when fossil fuel aid is planned, or when aid exceeds EUR 150 million, which is rarely the case in many smaller EU Member States. Yet because of the smaller size of the economies, it is precisely these countries which are most in danger of distorting their markets with aid measures.

Given the sensitivity of the topics, all aid schemes that fall within the scope of the CEEAG need to be consulted, including renewable energy, district heating, hydrogen or anything else, with a value threshold set according to the average aid value in the country, not one size fits all. We understand that this comment may also be relevant for the GBER and will make the same comment in the forthcoming consultation.

Specific comments

p.6 Introduction para 4: *‘The Green Deal Communication specifically sets out that the State aid rules will be revised to reflect those policy objectives, to support a cost-effective and just transition to climate neutrality, and to facilitate the phasing out of fossil fuels, in particular those that are most polluting, while at the same time ensuring a level-playing field in the internal market.’*

Comment: The inclusion of *‘in particular those that are most polluting’* introduces uncertainty and vagueness. The phasing out of fossil fuels is an imperative, particularly with regard to State aid, as State aid should not be used to support everything which is legal, but only specific activities which actively contribute to reaching the EU’s goals. Thus there should be no ambiguity regarding the need to phase out fossil fuels in order to reach carbon neutrality by 2050.

Recommendation: Delete *‘in particular those that are most polluting,’*.

p.15 18. (33) *‘energy-efficient district heating and cooling’ means district heating and cooling as defined in Article 2, point (41) of Directive 2012/27/EU of the European Parliament and of the Council, as referred to by Article 2 (20) of Directive 2018/2001/EU of the European Parliament and of the Council³⁰;*

Comment: Directive 2012/27/EU and Directive 2018/2001/EU are currently being revised, so this definition may soon go out of date.

Recommendation: Clearly refer to the forthcoming Directives and any new definitions they may include.

p.17 18. (35) *“energy infrastructure” means any physical equipment or facility which is located within the Union or linking the Union to one or more third countries and falling under the following categories: (...) ‘(b) concerning gas: (i) transmission and distribution pipelines for the transport of natural gas, bio gas and renewable gases of non-biological origin that form part of a network, excluding high-pressure pipelines used for upstream distribution of natural gas;’*

Comment: Renewable gases of non-biological origin needs to be defined. If it includes renewable hydrogen, which is mentioned further down on p. 17, the terminology should be uniform.

Recommendation: Define renewable gases of non-biological origin.

‘(e) infrastructure used for transmission or distribution of heat/steam/cooling from multiple producers/users, based on use of zero/low carbon heat/steam or waste heat from industrial applications;

Comment: There is a large difference between zero carbon heat and low-carbon heat, which is not even defined in the draft CEEAG. Casually mentioning them together opens the door for supporting fossil fuels in an unclearly defined manner.

Recommendation: Delete *‘/low carbon’*.

‘(f) projects of common interest, or Projects of Mutual Interest as defined in Article 2 of Regulation (EU) 347/2013 of the European Parliament and of the Council and Article 170 of TFEU 34.’

Comment: Regulation (EU) 347/2013 is currently being revised so this definition will soon be outdated.

Recommendation: The CEEAG also needs to refer to any other forthcoming versions of the Regulation in order to avoid potentially going out of date almost immediately.

'(g) other infrastructure categories, concerning infrastructure that enables physical or wireless connection of zero/low carbon energy between producers and users from multiple access and exit points and which are open to access by third parties not belonging to the infrastructure owner/manager undertakings;'

Comment: There is a large difference between zero carbon and low-carbon energy, which is not even defined in the draft CEEAG. Casually mentioning them together opens the door for supporting fossil fuels in an unclearly defined manner.

Recommendation: Delete '/low carbon'.

p.20 18. (42) *'high-efficiency cogeneration' means high-efficiency cogeneration as defined in Article 2, point (34), of Directive 2012/27/EU;'*

Comment: Directive 2012/27/EU is currently being revised, so this definition may soon go out of date.

Recommendation: Refer to the forthcoming Directive and any updates to the definition this may entail.

p.25 24. *'Member States must also describe if and how the aid will contribute to the achievement of objectives of Union climate policy, environmental policy and energy policy and more specifically, the expected benefits of the aid in terms of its material contribution to environmental protection, including climate change mitigation, or the efficient functioning of the internal energy market.'*

Comment: We welcome the inclusion of a point requiring member states to justify the measure's contribution to climate, environmental and energy policy. However, this is mandatory, and cannot be substituted by a justification of how the project contributes to the efficient functioning of the internal energy market.

Recommendation: 1) Change the last clause to **'and, if applicable, the efficient functioning of the internal energy market.'** 2) Add a sentence clarifying that aid which contributes to one policy but is in conflict with another shall not be granted, and making clear that this will be checked with the relevant DG. For example, a hydropower plant increases the amount of renewable electricity being generated, but in most cases inhibits the possibility of a river reaching good status under the Water Framework Directive.

p.26 32. *'If the supported activity or aid measure or the conditions attached to it, including its financing method when it forms an integral part of the measure, entail a violation of relevant Union law, the aid cannot be declared compatible with the internal market. This may be the case, for instance, where the aid is subject to clauses conditioning it directly or indirectly on the origin of products or equipment, such as requirements for the beneficiary to purchase domestically produced products.'*

Comment: We welcome the inclusion of a point clearly underlining the need to comply with all EU legislation. However, it needs to be made clearer that this will be checked by DG COMP via interservice consultation with the relevant DGs, for example DG ENV re. potential environmental breaches. It also needs to be made clearer what will happen if it is later discovered that an activity is in breach of EU law, after the aid has been approved, ie. that the aid must be recovered. Many investigations into breaches of law take years, by which time the aid has often already been awarded. Ensuring recovery of the aid would contribute to the rational use of State aid and would act as a disincentive for future investors to breach EU law.

Recommendation: Add a paragraph clearly stating that aid must be recovered from any activity benefiting from aid measures that is confirmed by the competent authorities or a court to entail a breach of EU law after the approval of the aid.

p.31 49. *'The selection criteria in the competitive bidding process should as a general rule be based on the aid amount requested by the applicant put in direct or indirect relation to the contribution to the objective of the measure (for example in terms of unit of environmental protection or unit of energy). In a few exceptional cases, it may be appropriate to include other non-price selection criteria (for instance additional*

environmental, technological or social criteria). In such cases, such other criteria must account for not more than 25 % of the weighting of all the selection criteria. The Member State must provide reasons for the proposed approach and ensure it is appropriate to the objective pursued.'

Comment: We welcome the recognition that environmental and social criteria may be required as part of competitive bidding processes. This is highly appropriate for renewable energy auctions, particularly in relation to renewable energy community projects, which offer strong social benefits but may not perform as well on price as larger companies with more experience. However we question whether the maximum should be set at 25 per cent, as this may not be enough to address the imbalance between renewable energy communities and commercial producers, for example. Likewise, developers offering projects on brownfield sites may not be the most price-competitive due to the need for rehabilitation or preparation of the sites, yet they clearly offer strong environmental benefits. It is not clear whether a 25 per cent cap on additional criteria would be sufficient to take these elements into account.

Recommendation: Better explain why 25 per cent is an appropriate cap, or raise it to a level which would allow the social and environmental benefits of renewable energy communities, brownfield projects and others to be taken properly into account.

p.35 69. *'In that balancing exercise, the Commission will pay particular attention to Article 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council, including the 'do no significant harm' principle, or other comparable methodologies. Furthermore, as part of the assessment of the negative effects on competition and trade, the Commission may take into account, where relevant, negative externalities of the aided activity where such externalities adversely affect competition and trade between Member States to an extent contrary to the common interest by creating or aggravating market inefficiencies including in particular those externalities that may hinder the achievement of climate objectives set under EU law.'*

Comment: The Do No Significant Harm criteria from the EU sustainable finance taxonomy are so far not sufficient to exclude environmentally harmful projects, including due to the lax biomass criteria and the threat that gas and nuclear will still be included. Nevertheless, it is reasonable to take them into account as long as they are not the sole source of guidance on this matter.

Recommendation: No text changes needed but in reality, caution should be exercised with these criteria.

p.35 71. *'Measures that directly or indirectly involve support to fossil fuels, in particular the most polluting fossil fuels, are unlikely to create positive environmental effects and often have important negative effects because they can increase the negative environmental externalities in the market. The same applies for measures involving new investments in natural gas, unless it is demonstrated that there is no lock-in effect. This will in principle render a positive balancing for such measures unlikely, as further explained in Chapter 4.'*

Comment: The phrasing of this paragraph needs to be adjusted as it makes it sound like natural gas is not a fossil fuel, which it most certainly is, and it draws a false division between more and less polluting fossil fuels, which is irrelevant at this stage of the global climate emergency.

Recommendation: We therefore recommend deleting the surplus parts, so the paragraph would read: *'Measures that directly or indirectly involve support to fossil fuels are unlikely to create positive environmental effects and often have important negative effects because they can increase the negative environmental externalities in the market. This will in principle render a positive balancing for such measures unlikely, as further explained in Chapter 4.'*

4. CATEGORIES OF AID

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

p.36 74. *'This Section lays down the compatibility rules for aid measures primarily aimed at reducing greenhouse gas emissions, including aid for the production of renewable and low carbon energy, aid for energy efficiency including high-efficiency cogeneration, aid for carbon capture, storage and use, and aid for the reduction or avoidance of emissions resulting from industrial processes. It also covers support for the removal of greenhouse gases from the environment. This Section does not apply to measures whose primary objective is not the reduction or removal of greenhouse gas emission.'*

Comment: Combining renewable energy, undefined 'low carbon energy', cogeneration, and carbon capture and storage together in one section is inappropriate as it gives the impression that they have approximately the same status in terms of their desirability and contribution to the EU Green Deal. 'Low-carbon energy' is commonly – though wrongly – used to include projects which involve fossil gas to some extent. Therefore, the mention of it in this section is also in contradiction with the Paris Agreement's 1.5 Celsius goal, in which no more fossil fuel infrastructure can be built, as explained above, and it contradicts paragraph 71. which takes a more cautious approach towards using State aid for fossil fuels.

Recommendation: Keep the section on renewable energy separate from the sections on cogeneration and removal of greenhouse gases from the environment; exclude the undefined term 'low carbon energy' altogether.

p.36 76. *'Support for biofuels, bioliquids, biogas and biomass fuels can only be approved to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts.'*

Comment: The criteria in Directive (EU) 2018/2001 are insufficient to prevent both biodiversity damage, and significant greenhouse gas emissions from biomass. As mentioned above, forest biomass can no longer be considered carbon neutral, even if trees are replanted, due to the short timeframe we have to stop runaway climate change, and only fine woody biomass harvested at rates which leave some organic material in place in the forest can now be considered sustainable. Allowing state aid for forest biomass therefore creates a market distortion compared to other greenhouse-gas emitting energy sources.

Recommendation: Primary woody biomass should not be allowed to continue benefiting from State aid at all, considering the JRC's [recent findings](#) and the need to take a precautionary approach until the EU's sustainability approach to biomass is more robust.

p.38 84. *'The Commission will assess the reasons given as justification and will, for instance, consider that a more limited eligibility does not unduly distort competition where: ...'*

Comment: Limiting eligibility in order to meet EU environmental goals is legitimate and should not be considered as unduly distorting competition. For example, if a country chooses not to open auctions to hydropower due to the need to contribute to the goals of the Water Framework Directive or the EU Biodiversity Strategy, it should not be penalised.

Recommendation: Add another item to the list: (g) a more selective approach is needed in order to achieve EU environmental goals.

p.38 85. *'Prior to the notification of aid, other than in duly justified exceptional circumstances, Member States must consult publicly on measures to be notified under this Section. The obligation to consult does not apply in respect of amendments to already approved measures that do not alter their scope or eligibility, and the cases referred to in point 86.'*

86. *‘No public consultation is required for measures falling under point 85(b) where competitive bidding processes are used and the measure does not support investments in fossil-fuel based energy generation or industrial production.’*

85.(b) *‘for measures where the estimated average annual aid to be granted is < EUR 150 million per year,...’*

Comment: We welcome the introduction of public consultations, but they must cover a broader range of measures if they are to be of any use. In smaller member states such as Croatia or Slovenia, aid rarely reaches EUR 150 million, yet because of the small economies, can have a comparatively greater distortive effect. So the threshold needs to be much, much lower for smaller economies – it makes no sense to have the same threshold for e.g. Germany and e.g. Croatia. We realise that this is connected to the GBER and would have a similar comment for the forthcoming consultation on that.

In addition, the requirement needs to apply to renewable energy auctions and/or feed-in tariff schemes in order to improve public acceptance, which is extremely low in some countries, particularly in the central and eastern part of the EU. While the public outcry that has happened in many countries relates more to feed-in tariffs than to premiums, as more auctions are held, if they incentivise poorly sited or unpopular projects, it is only a matter of time before the same resistance will appear in relation to premiums.

Recommendation: Delete point 86, and in point 85 delete *‘and the cases referred to in point 86.’*

p.39 87. and 308. *‘Consultation questionnaires must be published on a public website.’*

Comment: There is no reason why the consultation must include questionnaires. These often unnecessarily limit the framing of a topic and therefore stifle debate, defeating the purpose of holding a consultation.

Recommendation: Rephrase to: *‘Consultation instructions and input received must be published on a public website.’*

p.40 92. *‘Exceptions from the requirement to allocate aid and determine the aid level through a competitive bidding process can be justified where evidence, including that gathered in the public consultation, is provided that one of the following applies: (...)*

(b) beneficiaries are small projects, defined as follows:

(i) for electricity generation or storage projects – projects below the threshold in Article 5 of Regulation (EU) 2019/943;’

Comment: The balancing threshold from Regulation 2019/943 of 400 kW until 2026 is still too high for small hydropower projects, of which even very small ones can cause significant damage to watercourses, particularly cumulatively, while making a negligible contribution to electricity supply. Likewise, we see no value in incentivising electricity-only forest biomass projects.

On the other hand, such a threshold is too low for some renewable energy community projects. Although we understand the wish to avoid the confusion of having too many different thresholds for different purposes, and the different thresholds for feed-in tariffs and auctions in the current EEAG are indeed confusing, still different rules are needed for regular commercial projects vs. renewable energy community projects. Also, the balancing thresholds will change for projects commissioned from the beginning of 2026, which adds additional confusion.

We therefore propose to keep the same 400 kW threshold given for heat and electricity consumption projects, reducing it to 200 kW threshold given in Regulation 2019/943 to apply to projects commissioned from 1 January 2026, but still high-impact renewables – primary woody biomass and hydropower – need to be excluded. It should also be noted that the smallest biomass projects are also the easiest ones to find alternatives for, such as heat pumps, so there would be no suitable lower limit for primary woody biomass.

Recommendation: I) Add *‘(c) beneficiaries are Citizen Energy Communities as defined in Directive 2019/944.’*

II) Adjust point (i) to read: *(i) for electricity generation or storage projects – projects below the threshold in Article 5 of Regulation (EU) 2019/943. High-impact and mature forms of renewable energy – primary woody biomass and hydropower - must not be exempted from competitive tendering at all.*

III) Add a definition of [primary woody biomass](#).

p.43 108. *‘Aid for decarbonisation may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market, or where it locks in certain technologies, hampering the wider development of a market for and the use of cleaner solutions. The Commission will therefore also verify that the aid measure does not stimulate or prolong the consumption of fossil-based fuels and energy, thereby hampering the development of cleaner alternatives and significantly reducing the overall environmental benefit of the investment. Member States should explain how they intend to avoid that risk, including by way of binding commitments to use mainly renewable or low carbon fuels or phase out fossil fuel sources.’*

Comment: The general point is highly important, as crowding out more environmentally acceptable investments is a major threat of improperly targeted State aid. However, putting “renewable or low carbon fuels” on the same footing is unacceptable. Member States must stimulate renewable energy, not undefined “low carbon fuels”, and phasing out fossil fuels must go hand in hand with this, it is not an alternative.

Recommendation: Change the last sentence to: *‘Member States should explain how they intend to avoid that risk, including by way of binding commitments to use **renewable energy and** phase out fossil fuel sources.’*

p.44 109. *‘The Commission considers that certain aid measures have negative effects on competition and trade that are unlikely to be offset. In particular, certain aid measures may aggravate market failures, creating inefficiencies to the detriment of consumers and social welfare. For instance, measures that incentivise new investments in energy or industrial production based on the most polluting fossil fuels, such as coal, diesel, lignite, oil, peat and oil shale, increase the negative environmental externalities in the market. They will not be considered to have any positive environmental effects, given the incompatibility of these fuels with the Union’s climate targets.’*

Comment: The clear statement in this paragraph is welcome. However it draws a distinction between ‘the most polluting fossil fuels’ and other fossil fuels, ie. gas, which can no longer be justified, for the reasons mentioned in the general comments, above.

Recommendation: Change the third sentence to read: *‘For instance, measures that incentivise new investments in energy or industrial production based on fossil fuels increase the negative environmental externalities in the market.’*

p.44 110. *‘Similarly, measures that incentivise new investments in energy or industrial production based on natural gas may reduce greenhouse gas emissions and other pollutants in the short term but aggravate negative environmental externalities in the longer term, compared to alternative investments. For investments in natural gas to be seen as having positive environmental effects, Member States must explain how they will ensure that the investment contributes to achieving the Union’s 2030 climate target and 2050 climate neutrality target. In particular, the Member States should explain how a lock in of this gas-fired energy generation or gas-fired production equipment will be avoided. For example, this may include binding commitments by the beneficiary to implement decarbonisation technologies such as CCS/CCU or substitute natural gas by renewable or low carbon gas or to close the plant on a timeline consistent with the Union’s climate targets.’*

Comment: With the changes recommended for paragraph 109, this paragraph is not needed any more. It should be noted that fossil gas often does not reduce greenhouse gas emissions in the short term, due to [fugitive methane emissions from extraction and transportation, which are often sufficient to undermine any emissions reductions at the point of combustion](#). New studies are increasingly showing that global [methane emissions have been underestimated](#) and calling for heightened action.

Additionally, the examples given of how Member States might explain how they will avoid lock-in show precisely why such an approach is not likely to work. Over a decade ago, promoters of new coal-fired power plants often pledged to make them CCS-ready. Some of the coal plants materialised, but the CCS did not. The Šoštanj 6 plant in Slovenia is one such example of a plant which was built, and received its operating licence in early 2016. As of 2021, the plant is [generating losses every year](#) and the Slovene government is discussing phasing out coal by 2033, trying to find a balance between minimising its losses and ensuring that demand is covered. There is no more reason to believe that a power plant built after 2021 will apply CCS than any of the plants so far, thus pledges to this effect by governments will only delay climate action and cause carbon lock-in and potentially stranded assets.

Pledges to use renewable or undefined ‘low carbon gas’ in gas infrastructure are similarly unrealistic and threaten to provide a fig leaf for the construction of unneeded pipelines. None of the renewable gas technologies available so far look set to provide such large volumes of renewable gas as has been the case so far with fossil gas, so assuming that they will is setting the EU up for more stranded assets and/or carbon lock-in.

Recommendation: If gas is included in paragraph 109. as it should be; delete paragraph 110. If not, delete the examples given in paragraph 110.

p.47 134. *‘Measures that incentivise new investments in natural gas-fired equipment aimed at improving the energy efficiency of buildings may lead to a reduction in energy demand in the short run but aggravate negative environmental externalities in the longer run, compared to alternative investments. Moreover, aid for the installation of natural gas-fired equipment may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market, or where it locks in certain technologies, hampering the wider development of a market for and the use of cleaner technologies. The Commission considers that the positive effects of measures that create such a lock-in effect are unlikely to outweigh their negative effects. As part of its assessment, the Commission will consider whether the natural gas-fired equipment replaces energy equipment using the most polluting fossil fuels, such as oil and coal.’*

Comment: We very much welcome the majority of this statement. However, given that alternatives to gas-fired energy equipment are generally available, and that any gas-fired equipment installed now is likely to be operating well past the time when the EU has to decarbonise, the time for supporting ‘the lesser evil’ with State aid should be long gone.

Recommendation: Delete the last sentence and consider combining this paragraph with paragraph 135.

p.57 4.4 Aid for resource efficiency and for supporting the transition towards a circular economy

We agree with the criteria in this section.

4.8 Aid for the security of electricity supply

p.74 286. *‘Such measures may also be designed to support environmental protection objectives, for example through the exclusion of more polluting capacity or measures to give more environmentally beneficial capacity an advantage in the selection process.’*

Comment: This is not optional, such measures must always be designed to put energy efficiency measures first and to give preference to more environmentally beneficial capacity. Demand response is mentioned in paragraph 301. but it should be included here as the point needs to be clearly made. Not requiring a strict hierarchy of environmental acceptability means that capacity mechanisms may continue to act as a loophole for continued support for fossil fuel generation.

In addition, environmentally beneficial capacity does not mean only technologies that reduce greenhouse gases or other pollutants, but also those that do not have a high impact on biodiversity as well.

Recommendation: Rephrase to *'Such measures must also be designed to support environmental protection objectives, by putting energy savings measures first and through measures to give more environmentally beneficial capacity an advantage in the selection process.'*

p.76 304. *'Member States are encouraged to introduce additional criteria or features in their security of supply measures to promote the participation of greener technologies (or reduce the participation of polluting technologies) necessary to support the delivery of the Union's environmental protection objectives.'*

Comment: Similarly to the point above, stating that Member States 'are encouraged' to promote the participation of greener technologies does not give clear instructions to the Member States. This should be a requirement, not optional. In addition, as above, it is not enough to exclude polluting activities as non-polluting activities may still have harmful biodiversity impacts, therefore overall environmental impact needs to be taken into account.

Recommendation: Rephrase to: *'Member States must introduce additional criteria or features in their security of supply measures to promote the participation of environmentally beneficial technologies necessary to support the delivery of the Union's environmental protection objectives.'*

p.77 306. *'Prior to the notification of aid, other than in duly justified exceptional circumstances, Member States must consult publicly on measures to be notified under this Section. The obligation to consult does not apply in respect of amendments to already approved measures that do not alter their scope or eligibility, and the cases referred to in point 307.'*

p.78 307. *'No public consultation is required for measures falling under point 306 (b) where competitive bidding processes are used and the measure does not support investments in fossil-fuel based energy generation.'*

Comment: We welcome the concept of public consultations to help ensure effective and sparing use of public support for capacity mechanisms. However the exception in paragraph 307. is not justified as the potential deficiencies of a capacity mechanism are not solely limited to supporting fossil fuels.

Recommendation: 1) In paragraph 306, delete the last part of the following sentence so that it reads: *'The obligation to consult does not apply in respect of amendments to already approved measures that do not alter their scope or eligibility.'*

2) Delete paragraph 307.

p.80 325. *'The Commission considers that certain aid measures have negative effects on competition and trade that are unlikely to be offset. In particular, certain aid measures may aggravate market failures, creating inefficiencies to the detriment of consumer and social welfare. For instance, measures – including network reserves and interruptibility schemes – that do not respect the emissions threshold applicable to capacity mechanisms set out in Article 22 of Regulation (EU) 2019/943 and that may incentivise new investments in energy based on the most polluting fossil fuels, such as coal, diesel, lignite, oil, peat and oil shale increase the negative environmental externalities in the market.'*

Comment: The clear statement in this paragraph is welcome. However it draws a distinction between ‘the most polluting fossil fuels’ and other fossil fuels, ie. gas, which can no longer be justified, for the reasons mentioned in the general comments, above.

Recommendation: Change the third sentence to read: *‘For instance, measures – including network reserves and interruptibility schemes – that do not respect the emissions threshold applicable to capacity mechanisms set out in Article 22 of Regulation (EU) 2019/943, and that may incentivise new investments in energy based on fossil fuels, increase the negative environmental externalities in the market.’*

p.80 326. *‘Measures that incentivise new investments in energy generation based on natural gas may support security of electricity supply but aggravate negative environmental externalities in the longer term, compared to alternative investments in non-emitting technologies. To enable the Commission to verify that the negative effects of such measures can be offset by positive effects in the balancing test, Member States should explain how they will ensure that such investment contributes to achieving the Union’s 2030 climate target and 2050 climate neutrality target. In particular, the Member States should explain how a lock-in of this gas-fired energy generation will be avoided. For example, this may include binding commitments by the beneficiary to implement decarbonisation technologies such as CCS/CCU or substitute natural gas by renewable or low carbon gas or to close the plant on a timeline consistent with the Union’s climate targets.’*

Comment: With the changes proposed in paragraph 325. this paragraph becomes unnecessary and should be deleted. As noted above, mere pledges to install CCS or substitute fossil gas with renewable gas or undefined low-carbon gas cannot be taken seriously as a guarantee that lock-in will not occur.

Recommendation: If gas is included in paragraph 325. as it should be; delete paragraph 326. If not, at least delete the examples given in paragraph 326.

4.9 Aid for energy infrastructure

p.81 329. *‘...This is particularly true for infrastructure projects having a cross-border impact such as Projects of Common Interest, as defined by Article 4 of Regulation (EC) No 347/2013.’*

p.82. 337. *‘... (a) the Commission considers that for projects of common interest as defined by Article 4 of Regulation (EC) No 347/2013 which are fully subjected to internal energy market legislation,...’*

Comment: This Regulation is soon to be superseded and the new one should have a different definition.

Recommendation: Make a clear reference to the successor of the existing TEN-E Regulation.

p.82 333. *‘Similarly, the Commission considers that there is no State aid involved in investments where the energy infrastructure is run under a ‘natural monopoly’, which is deemed to exist where the following cumulative conditions are met:...*

(c) the infrastructure is not designed to selectively favour a specific undertaking or sector but provides benefits for society at large, which is normally the case for gas and electricity infrastructure.’

Comment: At this point in the global climate emergency we strongly disagree with the notion that new gas infrastructure is not designed to favour a specific undertaking but rather society at large. For the EU to achieve its 2030 target to cut greenhouse gas emissions by at least 55 per cent, the European Commission [projects EU fossil gas use to decrease](#) by 32-37 per cent of final consumption by 2030. Given that [the EU no longer requires additional gas infrastructure](#) and must reduce its gas consumption rapidly, State aid for such infrastructure would now almost exclusively favour specific undertakings. Certainly it would no longer society at large, which is increasingly suffering from the climate impacts of fossil fuels, including gas, and will likewise have to pay the costs of delayed transition caused by gas infrastructure lock-in.

Recommendation: Delete *‘, which is normally the case for gas and electricity infrastructure’*.

p.83 339.(c) *'In addition to the approach above outlined, the Commission considers that for natural gas infrastructure investments, the positive effects on competition manifestly outweigh its negative effects on competition where the resulting infrastructure is fit for use for hydrogen and renewable gases or fuels of non-biological origin. Where this is not the case, in order to off-set the negative effects on competition, the Member State concerned needs to demonstrate the following:*

- (i) why it is not possible to design the project so that it is fit for use for hydrogen and renewable gases or fuel of non-biological origin;*
- (ii) why the project does not create a lock-in effect for the use of natural gas; and*
- (iii) how the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target.'*

Comment: The fact that infrastructure is physically fit for use for hydrogen and renewable gases or fuel of non-biological origin does not mean that this is actually what it will be used for. In fact, it is highly unlikely that sufficient renewable hydrogen or renewable gases will be available to fill the existing – let alone new – gas infrastructure within the coming decades. According to [IRENA](#) (2019) 95 per cent of current hydrogen manufacture relies on fossil fuels, with the remainder coming as a byproduct from chlorine manufacturing.

Hydrogen production from sustainable forms of renewable energy does need to be developed for selected purposes in hard-to-decarbonise sectors, but as direct electrification is more cost-effective and energy-efficient for purposes such as heating buildings or most land transport, and as each country only has a limited renewable energy potential, hydrogen must be used very selectively.

Similarly with renewable gases, any massive expansion of their use comes with massive land use and biodiversity impacts and it cannot be expected that they will make a large-scale contribution. Overall, one cannot help but be reminded of the promises of CCS-readiness in planned fossil-fuel power plants from 10-15 years ago, which never materialised and instead were used to justify the construction of power plants whose closure is already now being planned.

Recommendation: Delete paragraph 339.

4.10 Aid for district heating or cooling

p.84 344. *'...In addition, State aid for energy efficient district heating and cooling systems using waste, including waste heat, as input fuel can make a positive contribution to environmental protection, provided that they do not circumvent the waste hierarchy principle.'*

Comment:

1) This section has been separated from the section on support for decarbonisation including renewable energy, thus it suggests that it refers to all waste, including the non-biodegradable fraction. In the current EEAG, the cogeneration provisions have proven in practice to be a loophole allowing State aid for fossil fuels as well as incineration of waste that is not biodegradable and would therefore not qualify for renewable energy State aid. It is no longer acceptable to provide State aid for fossil fuels in any form, efficient or not, yet much of the waste burnt in incinerators is plastic, most of which is manufactured from fossil fuels.

For example, in the Sofia incinerator case, the EC in 2019 decided not to raise objections. The Decision included a section in which Bulgaria had assured the EC that *'Bulgaria confirmed that the project complies with the Directive 2008/98/EC on waste ("Waste Directive") and in particular with the waste hierarchy set out therein. As stated by Bulgaria, the waste that will be subject to energy recovery in the CHP installation has been subject to preliminary treatment in the MBT facility in order to extract recyclable materials and cannot be further subject to recycling. If the RDF is not subject to energy recovery, it would be landfilled and*

this would be contrary to the waste hierarchy, which favours waste recovery over disposal. Finally, Bulgaria confirmed having introduced separate collection in line with the obligations applicable in accordance with the Waste Directive, and stated that the project will not prevent it from meeting the 2025, 2030 and 2035 targets for the recycling of municipal waste set out in the Waste Directive.'

This explanation did not address the question of whether any separate collection had been applied to the waste before MBT treatment, which would have yielded more and better quality recyclables. Nor did it address the fact that Bulgaria was one of the countries that in 2018 received an early warning from the EC about missing its 2020 recycling target, as it had a municipal waste recycling rate of only 32 % in 2016 - far from the required 50% by 2020.

While it is technically true that the Sofia incinerator alone will not singlehandedly prevent the country from meeting its targets, directing limited resources towards incineration instead of prevention and recycling increases the likelihood of failure to achieve them. By 2023, Bulgaria must separately collect biowaste, under the 2018 Waste Framework Directive, and no analysis was given of how this would affect the amount of RDF available. In fact, in our understanding of Article 3 of the RED, the State aid will actually have to be stopped in 2023 if Bulgaria does not fulfil its separate collection obligations. The CEEAG therefore needs to stipulate how exactly to assess compliance with separate collection and recycling obligations - some of which may still be in the future at the time the aid is approved - and what should be done in the case of countries not complying with them.

2) Article 3 of the Renewable Energy Directive states that *'Member States shall grant no support for renewable energy produced from the incineration of waste if the separate collection obligations laid down in that Directive have not been complied with'*. This provision needs to be included in the revised CEEAG for completeness as well, in order to make it clear that the waste hierarchy does not need to be followed only for the project in question, but also the project needs to fit into a wider strategy of compliance at the Member State level. In the case of the Sofia waste cogeneration incinerator, an assessment of Bulgaria's likelihood of meeting its recycling targets for 2020 and separate collection targets was not undertaken, resulting in the Commission approving aid for the project on the basis of some one-sided and incomplete argumentation put forward by the Member State.

Recommendation: Amend paragraph 344. to read: *'...As the EU moves towards a circular economy, State aid for district heating and cooling systems using non-biodegradable waste as input fuel threatens to circumvent the waste hierarchy principle and disincentivise separate collection and recycling. Member States shall therefore grant no support for energy produced from the incineration of waste if the separate collection obligations laid down in Directive 2008/98/EC. have not been complied with'*.

p.85 347. *'...The Commission considers that the upgrade or construction of district heating and cooling systems which rely on the most polluting fossil fuels such as coal, lignite, oil and diesel, have negative consequences on competition and trade which are unlikely to be offset unless the following cumulative conditions are fulfilled:*

(a) the support is limited to the upgrade of the distribution network;

(b) the distribution network is or becomes fit for the transport of heat or cooling generated from renewable energy sources;

(c) the investment does not result in increased generation of energy from the most polluting fossil fuels (for example, by connecting additional customers);

(d) there is a clear timeline involving firm commitments for transitioning away from the most polluting fossil fuels, compatible with the Union's 2030 climate target and the 2050 climate neutrality target.'

348. *'As regards the construction or upgrade of district heating generation installations, measures that incentivise new investments in energy based on natural gas may reduce greenhouse gas emissions in the*

short run but aggravate negative environmental externalities in the longer run, compared to alternative investments. For those investments in natural gas to be seen as having positive environmental effects, Member States must explain how they will ensure that the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target and, in particular, how a lock-in of the gas-fired energy generation or gas-fired production equipment will be avoided. For example, this may include binding commitments by/from the beneficiary to implement CCS/CCU or substitute natural gas by renewable or low carbon gas or to close the plant on a timeline consistent with the Union's climate targets.'

Comment: Again an unjustified distinction is made here between gas and all other fossil fuels, and the conditions given for gas are no guarantee at all that lock-in will not occur. Any Member State can claim that their infrastructure will be ready for renewable gas or that CCS will be fitted in the future but this does not mean it is going to happen. Is the EC then going to follow up on every case and make sure they have done it and order the recovery of aid if it has not been done? We find this highly unlikely given the long timescales likely to be involved.

Recommendation: 1) Amend para **347**. so that it reads as follows. '*...The Commission considers that the upgrade or construction of district heating and cooling systems which rely on fossil fuels have negative consequences on competition and trade which are unlikely to be offset unless the following cumulative conditions are fulfilled:*

- (a) the support is limited to the upgrade of the distribution network;*
- (b) the distribution network is or becomes fit for the transport of heat or cooling generated from renewable energy sources;*
- (c) the investment does not result in increased generation of energy from fossil fuels (for example, by connecting additional customers);*
- (d) there is a clear timeline involving firm commitments for transitioning away from fossil fuels, compatible with the Union's 2030 climate target and the 2050 climate neutrality target.'*

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

Comment: The introduction of the proposed Carbon Border Adjustment Mechanism (CBAM) is designed to ensure that the incentive for energy-intensive industries to move out of the EU is reduced. This introduces a danger of overcompensation when combined with reductions of energy levies.

Recommendation: Delete this section or at least explain how such aid will fit together with the proposed CBAM in order to avoid overcompensation.

p.89 4.12 Aid for coal, peat and oil shale closure

General comment: This section needs to exclude the possibility of closure aid being granted for plants which have already received restructuring aid within the last few years or which are receiving capacity payments.

Recommendation: Include a clause prohibiting the cumulation of closure aid with other aid.

4.1.2.1 Aid for early closure

372. '*Measures covered by this Section can facilitate the development of certain economic activities or areas.'*

Comment: This must be a minimum requirement for early closure aid rather than a general statement. The state aid notification needs to explain how this will be ensured by the aid.

Recommendation: Adjust the first sentence of paragraph 372 to read: *‘Measures covered by this Section must facilitate the development of certain economic activities or areas and the aid notification must explain how this will be ensured.’*

p.89-90

373. *‘The closure of the coal, peat and oil shale activities should occur no later than one year from the award of the compensation, unless a correction mechanism is in place to update the calculation based on the most recent assumptions.’*

Comment: More specific dates need to be given here as this open-ended text allows compensation even after 2030, when coal plants need to have closed in line with the EU’s Paris Alignment commitments. Also this wording allows the adjustment of the compensation date to suit the closing date, instead of the other way round. We recommend incentivising earlier closure by allowing a decreasing aid intensity over time.

Recommendation: Amend point 373. to read (the percentages are examples): *‘The closure of the coal, peat and oil shale activities shall occur no later than 2030. Aid intensity may be set at up to 90% for closure of the plant before 2024, 70% for closure of the plant before 2027 and 50% for closure of the plant before 31 December 2029.’*