

EEB comments and amendments on the Communication from the Commission concerning the Guidelines on State aid for climate, environmental protection, and energy (CEEAG)

Table of Contents

1. Executive summary.....	2
2. Introduction	3
3. Amendments to Section 2.4	7
4. Amendments to Compatibility Assessment under art. 107(3), point C	21
a. Incentive effect	22
b. Necessity of aid: remedying market failures.....	22
c. Appropriateness	24
d. Proportionality.....	25
e. Transparency	27
f. Weighing the positive effects of aid against the negative effects on competition and trade	28
5. Categories of aid.....	29
a. Aid for the reduction and removal of greenhouse gas emissions, including through support for renewable energy.....	29
b. Aid for improvement of the energy and environmental performance of buildings	31
c. Aid for resource efficiency and for supporting the transition towards a circular economy	41
d. Aid for the prevention and the reduction of pollution other than greenhouse gases.....	44
e. Aid for the remediation contaminated sites, for the rehabilitation of natural habitats and ecosystems and for biodiversity and nature-based solutions.....	54
f. Aid for district heating and cooling	57
g. Aid for coal, peat and oil shale closure	59
6. New: Annex III	77

1. Executive summary

The EEB is Europe's largest network of environmental citizens' organisations, bringing together over 170 civil society organisations from more than 35 European countries. For this reason, it is in a unique position to contribute to the definition of several parts of the present Guidelines.

After a short general introduction, we have reviewed the definitions provided by the Commission (section 2.4 of the Guidelines), with the aim of making them clearer to not provide space for interpretation and/or misuse of the Guidelines for harmful projects. We provided three new definitions, which we think should be important to include.

Then, we considered the compatibility assessment under art. 107(3), point C of TFEU and provided comments for each of the issues that the Commission takes into account when assessing State aids cases. Whilst we support some general points made by the Commission, we think that in some cases it failed to give full effect to the provisions developed under its approach. For instance, whereas we support the references to the polluter pays principle, an opportunity has been missed by the Commission to use its power to hold polluters accountable and make them pay for the damages done. In this respect, internalising negative externalities would be a key measure to give teeth to such an important EU principle.

After that, we commented and, in most cases, provided amendments to the various categories of aid, including Annex 2, with the aim of reducing grey areas and make the Guidelines fit for the ambitious climate and zero-pollution ambitions of the EU. For the sake of brevity, we only copy-pasted the points we amended. We drafted a new Annex 3 to submit a concrete proposal to substantiate the internalisation of negative externalities by polluters.

2. Introduction

We support the European Commission initiative of revising the State aid rules in the field of climate, environmental protection and energy (CEEAG) to align them with the European Green Deal and welcome the possibility to provide comments through the open public consultation. The Guidelines will have to put the EU on a path to meet the 1.5C climate objective set by the Paris Agreement, as well as to contribute to the achievement of the Zero Pollution Ambition (ZPA) of the EU. They will also have to drive a green recovery and must avoid that public money is spent to subsidise environmentally unsustainable economic activities.

The finding that “the mere existence of market failures is not sufficient to prove the necessity of State aid” is supported. **The EEB takes the view that in most cases market failures are due to failures to internalise external costs**, such as pollution.

Those failures are also, either directly or indirectly, due to what we consider as “governance” failures, such as policy inconsistencies, lack of effective action to prevent pollution at source, excessive trust in the invisible hand of market and a general lack of courage of decision makers to implement all possible regulatory and market avenues to achieve a desired environmental outcome affecting certain economic actors. Our viewpoint that *“European taxpayers too often have to pay instead of polluters”* has been notably confirmed by a recent Court of Auditor report¹.

We call on the European Commission to rigorously enforce the polluter prevention (first) and the polluter pays principles within the CEEAG. It is in the European Commission's mandate and responsibility to enforce those key principles underlying EU environment legislation. It is no longer acceptable, nor coherent with the EU Green Deal and the “green oath”, that DG COMP takes an approach predominately focused on trade and competition aspects when taking State aid decisions.

To do so, the question of “cost effectiveness” shall be considered from different vantage points: “effective to whom?” and “time-effective to achieve what?”.

¹ Special Report 12/2021: The Polluter Pays Principle: Inconsistent application across EU environmental policies and actions



Given the environmental crisis we are living, environmental and climate protection should play a pivotal role in any trade and competition decisions; in fact, a healthy and safe environment is a prerequisite for a healthy and safe internal market. EU citizens and undertakings are increasingly experiencing in a direct way the effects of climate change and environmental pollution; these aspects should be at the heart of any market-related decision, including the ones on State aids.

The time window of opportunity is an equally key element. Key decisions have procrastinated for too much time and today the urgency to act has never been greater. **The costs of inaction or cost due to ineffective or too late measures will likely rise steep-wise** (this is notably the case for climate related inaction). The meaning of “cost effectiveness” is to be reviewed and subordinated to the need to act in a time effective manner when wider common interests such as sustainability of life on Earth and human health protection are at stake. These fundamental concerns must be factored in as “cost of inaction”.

As we have already highlighted in our previous inputs to making EU Competition law fit for the EGD², *“the EGD offers a once-in-a-lifetime opportunity to strive for a coherent and forward-looking approach on the application of the EU acquis. In these challenging times, the protection and the promotion of the “common interest” has never been more important; nevertheless, the notion of “common interest” needs to be refocused to today’s aspirations and citizens’ concerns, and it cannot be limited to a better functioning of the EU internal market alone.”*

The new approach on EU State aid needs to be aligned to the EGD and the ZPA; the criteria should clarify what the common interests under the new State aid regime period are, **recognise that the market should reflect the environmental costs of economic activities and that improved environmental, human health and climate protection are the essential basis for our economy to even function.**

On this basis and whilst acknowledging this comes from the wording of Article 107 TFEU, we disagree with the limitative approach on the negative condition (*“not adversely affect trading conditions to an extent contrary to the common interest”*) and the need for a positive condition (*“the aid must facilitate the development of an*

² <https://eeb.org/library/competition-policy-supporting-the-green-deal-goal-eeb-contribution/>



economic activity”). Instead, the CEEAG shall ensure the “best value for money for the common interest”, not for specific market actors only.

The positive condition should require the demonstration of serving the common interests aligned to the 1.5C climate objective and zero pollution objectives, achieved beyond the EU environmental acquis objectives and Union standards.

The negative condition should ensure absence of failures of addressing negative externalities or full exhaustion of other policy measures to the achievement of those objectives. The Commission should also consider that ecosystem services cannot be always quantified in economic terms, and that there are intrinsic limitations to take a pure cost and benefit assessment approach. Those limitations are also highlighted in the precited Court of Auditor report.

The CEEAG should play their important part to reconcile environmental and climate protection with economic activities. The good functioning of the market without considering its impact on our environment is a dangerous distortion of reality whose consequences we are already paying, and our grandchildren will pay even more. The full alignment of pollution prevention and the polluter pays principle with trade and competition issues, as well as the full inclusion of negative externalities in any State aid decision, is key to ensure a future-proof and sustainable EU.

The EEB would like to highlight the following points as to the current draft:

Aspects that are supported:

- A link to the achievement of the EGD and ZPA objectives as criteria of compatibility of aid.
- A shared view that market failures are due to policy failures.
- The need to rigorously enforce the polluter pays principle.
- Making EU competition law fit for delivering the EGD goals, recognising the role of EU State aid criteria and decisions taken in this regard.

Aspects that need rectification/improvements:

- The positive and negative conditions need to be revised as follows:
 - The positive condition should require the demonstration of serving the common interests aligned to the 1.5C climate objective and ZPA objectives, achieved in compatibility with the EU environmental acquis objectives and beyond Union standards.

- The negative condition should ensure absence of failures of addressing negative externalities or full exhaustion of other policy measures to the achievement of those objectives
- The criteria should take an integrated approach as to the desired outcome, meaning that they should not satisfy the achievement of a single objective under the EU acquis, but take into account the whole set of environmental objectives listed in art. 9 of Regulation 2020-852 (Taxonomy). Projects promoting one objective while negatively impacting other ones should not be funded³ (“best common interest value for money” test).
- Clearer and improved definition of what is meant with “clean”, “green”, “low carbon”, “breakthrough technologies”, “highly efficient” etc., with clear precedence for pollution prevention at source instead of end-of-pipeline pollution reduction (e.g. CCU).
- The necessity of State aid (compensation) shall only come as a last resort after the Member State has demonstrated that other policy measures have been considered / exhausted and after internalisation of negative environmental externalities.
- “Cost effectiveness” should be a sub-criterion subordinated to the necessity to act to minimize the cost of inaction and internalize liabilities of economic activities, also beyond the permit provisions.
- The method on how to conduct the cost benefit assessment and proportionality needs to be clarified (see Annex III)
- Reconsideration of support to CCS and CCU. Energy infrastructure that will contribute to perpetrate any type of fossil fuels should not be supported by State aid.
- Reconsideration of support to energy infrastructure and type of district heating and cooling.
- Reconsideration / removal of the mechanism of exemptions for energy-intensive industries using fossil fuels (including natural gas) as energy source.
- State aid for “early” closure of coal closure (4.12) shall be conditional to effective closure of coal and lignite combustion plants by latest 2027, for the other (oil/peat) and mine operations by latest 2030. Compensations to fossil fuels and peat combustion plants that went into operation after 2010

³ For instance, the cross media impact assessment is considered when assessing Best Available Techniques (BAT) options for industrial activities, meaning that trade-offs of conflicting environmental protection goals must be assessed together so to provide for the best overall option to the environmental protection as a whole: e.g. biomass combustion may reduce GHG emissions but may still generate NOx and dust air pollution whilst putting pressure on the water availability or other pressures on resource sustainability

or that had an economic lifetime above 14 years shall be excluded⁴. The list of eligible costs needs a revision (see comments to Annex II).

- Support to various options considered for the transition need to be aligned to the Paris Agreement Compatible (PAC) Scenario, as developed by the EEB and CAN-EU⁵, such as energy savings and deep renovation of buildings, modernisation of industrial production processes, increase of energy efficiency in transport leading to halving the EU's energy demand between 2015 and 2050, a swift ramping up of domestic renewable energy use (in particular of solar PV and wind energy) leading to renewable electricity generation tripling during the decade from 2020 to 2030, with renewables covering 50% of gross final energy consumption in 2030 and 100% in 2040.

3. Amendments relating to Section 2.4

(14) 'Carbon capture and use' or 'CCU' means a set of technologies that captures the CO ₂ emitted from industrial plants based on fossil fuels or biomass, including power plants and waste-to-energy plants [or captures it directly from ambient air], and transports it to a CO ₂ consumption or utilisation site;	(14) 'Carbon capture and use' or 'CCU' means a set of technologies that captures the CO ₂ emitted from industrial plants based on fossil fuels or biomass, including power plants and waste-to-energy plants [or captures it directly from ambient air], and transports it to a CO ₂ consumption or utilisation site for full re-use of that CO₂ ;
<p style="text-align: center;"><i>Justification</i></p> <p style="text-align: center;"><i>The definition only addresses the first part that is capture but does not define what is meant with "use" of that captured CO₂. Transporting it to a CO₂ consumption or utilization site does not clarify the captured CO₂ is really used.</i></p>	
(16) 'CO ₂ removal' means anthropogenic activities removing CO ₂ from the atmosphere and durably storing it in geological, terrestrial, or ocean reservoirs, or in products. It includes existing and potential anthropogenic enhancement of biological or geochemical sinks and direct air capture and storage, but excludes	(16) 'CO ₂ removal' means anthropogenic activities removing CO ₂ from the atmosphere and durably storing it in geological, terrestrial, or ocean reservoirs, or in products. It includes existing and potential anthropogenic enhancement of biological or geochemical sinks and direct air capture and storage, but excludes

⁴ Average lifetime is 46 years for coal plants, however we consider an average return of investment to be reached after 14 years of operation, see <https://eeb.org/library/eeb-contribution-on-the-case-of-german-state-aid-to-leag-and-rwe/>

⁵ <https://eeb.org/library/building-a-paris-agreement-compatible-pac-energy-scenario/>

natural CO2 uptake not directly caused by human activities.	natural CO2 uptake not directly caused by human activities. Durable means that effective storage cannot be less than 100 years.
<p><i>Justification</i></p> <p><i>In order to support an environmental level playing field for implementation and not to spend public resources to unproven techniques, the term “durable” shall be clarified. A time scale of 100 years and more can be considered as durable.</i></p>	
(18) ‘clean groundhandling equipment’ means equipment used in service activities incidental to air transportation that has zero direct (tailpipe) CO2 emissions;	(18) ‘clean groundhandling equipment’ means equipment used in service activities incidental to air transportation that has zero direct (tailpipe) CO2 emissions and does not use chemicals of concern;
(19) ‘clean terminal equipment’ means equipment used for the loading, unloading and transshipment of goods and intermodal loading units, and moving cargo within the terminal area, that have zero direct (tailpipe) CO2 emissions;	(19) ‘clean terminal equipment’ means equipment used for the loading, unloading and transshipment of goods and intermodal loading units, and moving cargo within the terminal area, that have zero direct (tailpipe) CO2 emissions and does not use chemicals of concern;
<p><i>Justification</i></p> <p><i>The definitions of points 18 and 19 are about tailpipe CO2 emissions, but not about other pollutants or upstream GHG emissions linked to this technical option. Furthermore, the definition does not consider whether the cleaning solution involves the use of chemicals of concern / that are hazardous. Therefore, the term ‘clean’ cannot be used, being the definition “low CO2 tailpipe groundhandling equipment”.</i></p>	
(20) ‘clean transport vehicle’ means:	(20) ‘clean transport vehicle’ means:
(a) a road vehicle of categories M1, M2 or N1 fulfilling the definition of ‘clean vehicle’ set out in Article 4, point (4)(a), of Directive (EU) 2019/1161 of the European Parliament and of the Council;	(a) a road vehicle of categories M1, M2 or N1 fulfilling the definition of ‘clean vehicle’ set out in Article 4, point (4)(a), of Directive (EU) 2019/1161 of the European Parliament and of the Council;
(b) a road vehicle of category M3, N2 or N3 fulfilling the following definitions: - until 31 December 2025, for vehicles covered by Regulation (EU) 2019/1242 of the European Parliament and of the Council: the definition of ‘low-emission	(b) a road vehicle of category M3, N2 or N3 fulfilling the following definitions: –until 31 December 2025, for vehicles covered by Regulation (EU) 2019/1242 of the European Parliament and of the Council: the definition of ‘low-emission

<p>heavy-duty vehicle' set out in Article 3, point (12), of that Regulation;</p> <ul style="list-style-type: none"> - until 31 December 2025, for vehicles not covered by Regulation 2019/1242: the definition of 'clean vehicle' set out in Article 4, point (4)(b), of Directive (EU) 2019/1161; - from 1 January 2026: the definition of 'zero-emission heavy duty vehicle' set out in Article 4, point (5), of Directive (EU) 2019/1161; <p>(c) a vehicle of category L (two- or three-wheel vehicles or quadricycles) with tailpipe CO₂ emissions equal to 0g CO₂e/km calculated in accordance with the emission test laid down in Article 4 of Regulation (EU) No 168/2013 of the European Parliament and of the Council;</p> <p>(d) an inland vessel for passenger or freight transport that has zero direct (tailpipe) CO₂ emissions; or until 31 December 2025,</p> <p>(i) an inland vessel for freight transport that has direct (tailpipe) emissions of CO₂ per tonne kilometre (gCO₂/tkm), calculated (or estimated in case of new vessels) using the Energy Efficiency Operational Indicator²³, 50% lower than the average reference value for emissions of CO₂ defined for heavy duty vehicles (vehicle subgroup 5- LH) in accordance with Article 11 of Regulation 2019/1242;</p>	<p>heavy-duty vehicle' set out in Article 3, point (12), of that Regulation;</p> <p>–until 31 December 2025, for vehicles not covered by Regulation 2019/1242: the definition of 'clean vehicle' set out in Article 4, point (4)(b), of Directive (EU) 2019/1161;</p> <p>–from 1 January 2026: the definition of 'zero-emission heavy duty vehicle' set out in Article 4, point (5), of Directive (EU) 2019/1161;</p> <p>(c) a vehicle of category L (two- or three-wheel vehicles or quadricycles) with tailpipe CO₂ emissions equal to 0g CO₂e/km calculated in accordance with the emission test laid down in Article 4 of Regulation (EU) No 168/2013 of the European Parliament and of the Council;</p> <p>(d) an inland vessel for passenger or freight transport that has zero direct (tailpipe) CO₂ emissions;or until 31 December 2025,</p> <p>(i) an inland vessel for freight transport that has direct (tailpipe) emissions of CO₂ per tonne kilometre (gCO₂/tkm), calculated (or estimated in case of new vessels) using the Energy Efficiency Operational Indicator, 50% lower than the average reference value for emissions of CO₂ defined for heavy duty vehicles (vehicle subgroup 5- LH) in accordance with Article 11 of Regulation 2019/1242;</p>
<p style="text-align: center;"><i>Justification</i></p> <p style="text-align: center;"><i>The definition is undermining the said legal definitions, some vehicles are not “clean” but “less polluting”. A clear separate definition of “low emission” vehicle shall be provided to prevent green-washing.</i></p>	

<p>(23) 'contaminated site' means a site where there is a confirmed presence, caused by human activity, of materials or substances of such a level that they pose a significant risk to human health or the environment, taking into account current and approved future use of the land;</p>	<p>(23) 'contaminated site' means a site where there is a confirmed presence, caused by human activity, of hazardous materials or substances establishing possibility of soil and groundwater contamination. For activities covered under Directive 2010/75/EU, the absence of site contamination may be established through evidence provided in the baseline report; of such a level that they pose a significant risk to human health or the environment, taking into account current and approved future use of the land;</p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>The definition is not about what a contaminated site actually is, it is unclear on what the future use has to do with the fact on whether a site is contaminated or not. The significant risk threshold does not disqualify the site as being (not) contaminated. We propose a change to align to the IED definition, this requires establishing a 'baseline report' on necessity to determine the state of soil and groundwater contamination. It refers to "hazardous substances", without any risk thresholds. The remediation obligations are scaled to the actual risk and technical feasibility to remediate, this is however not about the definition of what a contaminated site is about. The definition of hazardous substances is added for legal clarity and consistence reasons.</i></p>	
<p>(24) 'demonstration project' means a project demonstrating a technology as a first of its kind in the Union and representing a significant innovation that goes well beyond the commercial state of the art;</p>	<p>(24) 'demonstration project' means a project demonstrating a technology as a first of its kind in the Union and representing a significant innovation that goes well beyond the commercial environmental state of the art;</p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>The CEEAG are not about general commercial innovations but only those innovations fitting the purpose of the guidelines, namely the Zero Pollution Ambition and climate protection. The "state of the art" concepts refers to Best Available Techniques (serving improved environmental performance). See related comment to meaning of "eco innovation".</i></p>	
<p>(30) 'eco-innovation' means all forms of innovative activities, including new production processes, new products or services, and new management and business methods, resulting in or aimed</p>	<p>(30) 'eco-innovation' means all forms of innovative activities, including new production processes, new products or services, and new management and business methods, resulting in or aimed</p>

<p>at significantly improving environmental protection and significantly reducing the environmental impacts of pollution. For the purposes of this definition, the following are not considered innovations:</p> <p>(a) activities leading only to minor changes or improvements on environmental protection;</p> <p>(b) an increase in production or service capabilities through the addition of manufacturing or logistical systems which are very similar to those already in use;</p> <p>(c) changes in business practices, workplace organisation or external relations that are based on organisational methods already in use in the undertaking;</p> <p>(d) changes in management strategy;</p> <p>(e) mergers and acquisitions;</p> <p>(f) ceasing to use a process;</p> <p>(g) simple capital replacement or extension;</p> <p>(h) changes resulting purely from changes in factor prices, customisation, regular seasonal and other cyclical changes;</p> <p>(i) trading of new or significantly improved products;</p>	<p>at significantly improving environmental protection and significantly reducing the environmental impacts of pollution. For the purposes of this definition, the following are not considered innovations:</p> <p>(a) activities leading only to minor changes or improvements on environmental protection;</p> <p>(b) an increase in production or service capabilities through the addition of manufacturing or logistical systems which are very similar to those already in use;</p> <p>(c) changes in business practices, workplace organisation or external relations that are based on organisational methods already in use in the undertaking;</p> <p>(d) changes in management strategy;</p> <p>(e) mergers and acquisitions;</p> <p>(f) ceasing to use a process;</p> <p>(g) simple capital replacement or extension;</p> <p>(h) changes resulting purely from changes in factor prices, customisation, regular seasonal and other cyclical changes;</p> <p>(i) trading of new or significantly improved products;</p> <p>(j) other commercial strategies leading to lower OPEX or CAPEX costs savings</p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>The definition is a good starting point but does not reflect the hierarchy of action (pollution preventing over control) and need to take an integrated protection approach, moving away from a watertight compartments approach. The wording of the suggested amendments is inspired from the BAT concept under the IED.</i></p>	
<p>(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:</p> <p>(a) concerning electricity:</p>	<p>(35) 'energy infrastructure eligible for State aids' means any physical equipment or facility which is located within the Union or linking the Union to one or more third countries that must serve the common interests of the</p>

<p>(i) transmission and distribution systems, where 'transmission' means the transport of electricity on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but does not include supply and 'distribution' means the transport of electricity on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but does not include supply;</p> <p>(ii) any equipment or installation essential for the systems referred to in point (i) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations;</p> <p>(iii) fully integrated network components means fully integrated network components as defined in Article 2, point (51), of Directive (EU) 2019/944 of the European Parliament and of the Council³²;</p> <p>(iv) smart electricity grids which means systems and components integrating information and communication technologies, through operational digital platforms, control systems and sensor technologies both at transmission and distribution level, aiming at a more efficient and intelligent electricity transmission and distribution network, increased capacity to integrate new forms of generation, storage and consumption and facilitating new business models and market structures;</p>	<p>Energy Union and would therefore consider the following:</p> <p>(a) concerning electricity:</p> <p>(i) transmission and distribution systems, where 'transmission' means the transport of electricity on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but does not include supply and 'distribution' means the transport of electricity on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but does not include supply;</p> <p>(ii) any equipment or installation essential for the systems referred to in point (i) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations;</p> <p>(iii) fully integrated network components means fully integrated network components as defined in Article 2, point (51), of Directive (EU) 2019/944 of the European Parliament and of the Council³²;</p> <p>(iv) smart electricity grids which means systems and components integrating information and communication technologies, through operational digital platforms, control systems and sensor technologies both at transmission and distribution level, aiming at a more efficient and intelligent electricity transmission and distribution network, increased capacity to integrate new forms</p>
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<p>(v) off-shore electricity grids, which means any equipment or installation of electricity transmission or distribution infrastructure, as defined in point (i) above, which has dual functionality: interconnection and transmission or distribution of offshore renewable electricity from the offshore generation sites to two or more countries. This also includes any offshore adjacent equipment or installation essential to operate safely, securely and efficiently, including protection, monitoring and control systems, and necessary substations if they also ensure technology interoperability and inter alia interface compatibility between different technologies;</p> <p>(b) concerning gas:</p> <p>(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;</p> <p>(ii) underground storage facilities connected to the high-pressure gas pipelines mentioned in point (i);</p> <p>(iii) reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) or compressed natural gas (CNG);</p> <p>(iv) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;</p>	<p>of generation, storage and consumption and facilitating new business models and market structures;</p> <p>(v) off-shore electricity grids, which means any equipment or installation of electricity transmission or distribution infrastructure, as defined in point (i) above, which has dual functionality: interconnection and transmission or distribution of offshore renewable electricity from the offshore generation sites to two or more countries. This also includes any offshore adjacent equipment or installation essential to operate safely, securely and efficiently, including protection, monitoring and control systems, and necessary substations if they also ensure technology interoperability and inter alia interface compatibility between different technologies;</p> <p>(b) concerning gas:</p> <p>(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;</p> <p>(ii) underground storage facilities connected to the high-pressure gas pipelines mentioned in point (i);</p> <p>(iii) reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) or compressed natural gas (CNG);</p>
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(v) smart gas grids, which means any of the following equipment or installation aiming at enabling and facilitating the integration of renewable and low-carbon gases (including biomethane or hydrogen) into the network: digital systems and components integrating information and communication technologies, control systems and sensor technologies to enable the interactive and intelligent monitoring, metering, quality control and management of gas production, transmission, distribution and consumption within a gas network. Furthermore, smart grids may also include equipment to enable reverse flows from the distribution to the transmission level and related necessary upgrades to the existing network;

(c) concerning hydrogen:

(i) transmission pipelines, for the high-pressure transport of hydrogen, as well as distribution pipelines for the local distribution of hydrogen, giving access to multiple network users on a transparent and non-discriminatory basis;

(ii) underground storage facilities connected to the high-pressure hydrogen transmission or distribution pipelines referred to in point (i);

(iii) dispatch, reception, storage, regasification or decompression facilities for hydrogen or hydrogen embedded in other chemical substances with the objective of injecting the hydrogen into the grid;

(iv) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;

(v) smart gas grids, which means any of the following equipment or installation aiming at enabling and facilitating the integration of renewable **and low-carbon** gases (including biomethane or hydrogen) into the network: digital systems and components integrating information and communication technologies, control systems and sensor technologies to enable the interactive and intelligent monitoring, metering, quality control and management of gas production, transmission, distribution and consumption within a gas **and heat** network. Furthermore, smart grids may also include equipment to enable reverse flows from the distribution to the transmission level and related necessary upgrades to the existing network;

(c) concerning hydrogen:

(i) transmission pipelines, for the high-pressure transport of **renewable** hydrogen, as well as distribution pipelines for the local distribution of hydrogen, giving access to multiple network users on a transparent and non-discriminatory basis;

(ii) underground storage facilities connected to the high-pressure hydrogen transmission or distribution pipelines referred to in point (i);

(iv) any equipment or installation essential for the hydrogen system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations. Any of the assets listed in points (i), (ii), (iii), and (iv) may be newly constructed assets or assets converted from natural gas to hydrogen ("repurposed"), or a combination of the two.

Assets listed under points (i), (ii), (iii), and (iv) which are subject to third party access qualify as energy infrastructure.

(d) concerning carbon dioxide:

(i) pipelines, other than upstream pipeline network, used to transport carbon dioxide from more than one source, that is to say, industrial installations (including power plants) that produce carbon dioxide gas from combustion or other chemical reactions involving fossil or non-fossil carbon-containing compounds, for the purpose of permanent geological storage of carbon dioxide pursuant to Article 3 of Directive 2009/31/EC of the European Parliament and of the Council or for the purpose of using carbon dioxide as feedstock or to enhance the yields of biological processes;

(ii) facilities for liquefaction and buffer storage of carbon dioxide in view of its further transportation;

(iii) infrastructure within a geological formation used for the permanent geological storage of carbon dioxide pursuant to Article 3 of the Directive

(iii) dispatch, reception, storage, regasification or decompression facilities for hydrogen or hydrogen embedded in other chemical substances with the objective of injecting the hydrogen into the grid;

(iv) any equipment or installation essential for the hydrogen system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations.

Assets listed in points (i), (ii), (iii), and (iv) may be newly constructed assets or assets converted from natural gas to renewable hydrogen ("repurposed"), or a combination of the two.

Assets listed under points (i), (ii), (iii), and (iv) which are subject to third party access qualify as energy infrastructure.

(d) concerning carbon dioxide:

~~(i) pipelines, other than upstream pipeline network, used to transport carbon dioxide from more than one source, that is to say, industrial installations (including power plants) that produce carbon dioxide gas from combustion or other chemical reactions involving fossil or non-fossil carbon-containing compounds, for the purpose of permanent geological storage of carbon dioxide pursuant to Article 3 of Directive 2009/31/EC of the European Parliament and of the Council³³ or for the purpose of using carbon dioxide as feedstock or to enhance the yields of biological processes;~~

<p>2009/31/EC and associated surface and injection facilities;</p> <p>(iv) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems. Assets listed under points (i), (ii) (iii) and (iv), which are subject to third party access qualify as energy infrastructure.</p> <p>(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;</p> <p>(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.</p> <p>(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;</p> <p>Assets listed under points (a) to (g) which are built for one or a small group of ex ante identified users and tailored to their needs ('dedicated infrastructure') do not qualify as energy infrastructure.</p>	<p>(ii) facilities for liquefaction and buffer storage of carbon dioxide in view of its further transportation;</p> <p>(iii) infrastructure within a geological formation used for the permanent geological storage of carbon dioxide pursuant to Article 3 of the Directive 2009/31/EC and associated surface and injection facilities;</p> <p>(iv) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems. Assets listed under points (i), (ii) (iii) and (iv), which are subject to third party access qualify as energy infrastructure.</p> <p>(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, providing preference to non-combustion type of solutions;</p> <p>(f) projects of common interest not involving any fossil fuel, 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.</p> <p>(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</p>
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	<p>belonging to the infrastructure owner/manager undertakings;</p> <p>Assets listed under points (a) to (g) which are built for one or a small group of ex ante identified users and tailored to their needs ('dedicated infrastructure') do not qualify as energy infrastructure.</p>
<p>(38) 'environmental protection' means any action designed to remedy or prevent pollution or other damage to physical surroundings, ecosystems or natural resources by human activities, including to mitigate climate change, to reduce the risk of such damage, to protect and restore biodiversity or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy and other techniques to reduce greenhouse gas emissions and other pollutants, as well as to shift to circular economy models to reduce the use of primary materials and increase efficiencies. It also covers actions that reinforce adaptive capacity and minimise vulnerability to climate impacts;</p>	<p>(38) 'environmental protection' means any action designed to prevent, and where not practicable, to remedy or prevent pollution, negative environmental impacts or other damage to physical surroundings, ecosystems or natural resources by human activities, including to mitigate climate change, to reduce the risk of such damage, to protect and restore biodiversity or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy and other techniques to reduce greenhouse gas emissions and other pollutants, as well as to shift to circular economy models to reduce the use of primary materials and increase efficiencies. It also covers actions that reinforce adaptive capacity and minimise vulnerability to climate impacts. Environmental protection shall be based on the principle of taking the most effective integrated approach to preventing negative impacts to the environment as a whole, with priority of preventing (negative impact to occur) at the source instead of control (reduction of impact or mitigation type of actions);</p>
<p><i>Justification</i></p> <p><i>A holistic and forward-looking definition of "environmental protection" is welcomed. The proposed changes reflect the hierarchy of environmental policy principles of the TFEU and</i></p>	

the IED to put priority on prevention of negative impacts at source over control/reduction of negative impacts. The integrated approach as to achieving a high general level of protection also aims to avoid negative cross-media impacts coming from a 'silos approach' of decision making.

(78) 'Union standard' means:

(a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings, excluding standards or targets set at Union level which are binding for Member States but not for individual undertakings;

(b) the obligation under Directive 2010/75/EU of the European Parliament and of the Council⁴² to use the best available techniques (BAT) and ensure that emission levels of pollutants are not higher than they would be when applying BAT; for cases where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU, those levels will be applicable for the purpose of these guidelines; where those levels are expressed as a range, the limit where the BAT is first achieved will be applicable;

(78) 'Union standard' means:

(a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings,

excluding or standards or targets set at Union level which are binding for Member States **but not for where there is a co-responsibility** by the individual undertakings **to reach those said standards or targets;**

(b) the obligation under Directive 2010/75/EU of the European Parliament and of the Council to use the best available techniques (BAT) and ensure that **environmental performance is better than what emission levels of pollutants are not higher than they would be achieved** when applying BAT **set for "new" installations;** for cases where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU, those **strict levels set for "new plants"** will have to be **overperformed be applicable** for the purpose of these guidelines; where those levels are **expressed as well for energy efficiency (BAT-AEELS or BATAEPLs) a range,** the **limit higher** level where the BAT is first achieved will be applicable;

Justification

The EU BREF BAT-AEELS / AEPL are based on reference plants that already achieve the levels under commercially and economically viable conditions. State of the art levels are set for "new plants", which in fact are already existing plants/installations. The CEEAG should drive for a real and meaningful incentive effect to BAT uptake and should not be (ab)used for recovering costs to the polluter catching up with established BAT.

(79) 'waste' means waste as defined in Article 3, point (1) of Directive 2008/98/EC;	(79) 'waste' means waste as defined in Article 3, point (1) of Directive 2008/98/EC and includes greenhouse gases generated by human activity. Waste generation of greenhouse gases will be considered as 'hazardous' when the atmospheric concentration of CO2 exceeds 300ppm and/or where the presence of CO2 generated by human activity at a given point source exceeds 20 tonnes.
<p style="text-align: center;"><i>Justification</i></p> <p><i>This amendment is consistent with the proposals set out under the new amendment 207 (a). The generation of GHG of human activity should be considered equally as "waste generation" activity. Waste is defined as "any substance or object which the holder discards or intends or is required to discard"; this is the case for many GHG generating activities where the GHG generated is not intended to be used by the same operator. This way the relevant Waste Hierarchy and Circular Economy provisions would be triggered equally. There is no objective, nor scientific reason to treat GHG differently from other type of waste gases.</i></p> <p><i>GHG emissions are per se not hazardous unless certain conditions are met. High hazard potential exists if CO2 is used in high quantities (e.g. transport and storage of CO2 or in use of industrial scale fire extinguishing plants). An illustration of a malfunction of a fire prevention system in Monchengladbach in 2008 liberated 24 tonnes of CO2, injuring more than 100 people.</i></p> <p><i>This amendment is consistent with EEB's view that CO2 should be included in the Seveso III Directive with thresholds of 20 tonnes (lower tier) / 1000 tonnes (higher tier). The 300ppm atmospheric threshold is taken from the UNFCCC, advising not to exceed this level since harmful for life on earth.</i></p>	
	NEW 1: 'hazardous substances' means substances or mixtures as defined in Article 3 of Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures [OJ L 353, 31.12.2008, p. 1]
<p style="text-align: center;"><i>Justification</i></p> <p><i>This amendment links to the change proposed under point 23 (contaminated site). The definition is copied from the IED Directive.</i></p>	

	<p>NEW 2: ‘green oath, do no harm compatibility check’ means that the decision maker submitting the State aid request and the public servant of the European Commission services involved in the compatibility assessment of the State aid in question will ensure that the impact of any state aid decision taken under this Framework will be scrutinised against all Green Deal objectives, which will be detailed in the explanatory memorandum to any State aid decision taken.</p>
<p><i>Justification</i></p> <p><i>This new definition includes the new working approach of the European Commission under the EGD to act under the green oath principle. It therefore shall apply as a guiding principle in the field of assessment of the said CEEAG for the public servants involved (Member States and European Commission).</i></p>	
	<p>NEW 3: “indirect operation aid” means any form of indirect State aid measures (such as pollution standards, emission limit values, other operating conditions such as permits, national legislation, the level or absence of levies, charge or taxation systems) that affect the operation of an installation or combustion plant or otherwise affect the operating benefit of the operator / undertaking</p>
<p><i>Justification</i></p> <p><i>This amendment links to our suggestion to require Member States to first address market failures (missed internalisation of negative externalities, complacent attitude on polluters, weak pollution standards enabling low-cost polluting activities at the expenses of human health and environmental protection. We consider those to be “governance failures”.</i></p>	

4. Compatibility assessment under art. 107(3), point C of TFEU

The heading and point 19 should also refer to the Environmental Acquis provisions (art. 191 TFEU) as to its legal basis since the primary purpose of the CEEAG are environmental protection.

As highlighted in the introduction, the first **positive condition** should be to demonstrate that the common interests aligned to the ZPA objectives are served and that the measure will achieve outcomes beyond the EU environmental acquis objectives and Union standard.

Therefore, **more important than to consider whether a given economic activity needs to be developed or not is the qualitative outcomes of a given service or product**; a given economic activity benefitting from the measure should be scrutinized against its compatibility with the zero-pollution and climate neutrality ambitions. This will prevent a silo approach as to estimation of cost and benefits and ensure a coherent assessment as to the “best value for money in the common interest” (public spending) which can be serving many interests.

The absence of breach of any relevant provisions of Union law criteria is currently listed as a ‘positive condition’ (point 21); **anyway, to the EEB this is a minimal “by default” requirement and, hence, is a negative condition.**

Instead, the beneficiary of State aid and the Member State proposing the measure shall demonstrate how the measure is of “added value” to supporting the EGD and ZPA targets of the Union beyond what is already legally required (point 24). On these aspects, we consider the CEEAG rather weak.

Where this test is positive, an aid may be granted after verification of absence of the negative conditions test, namely:

- the absence of failures by Member States to address negative externalities and the full use of other policy measures able to achieve the same objectives;
- The demonstration by market operators benefitting from the aid that other available EU resources (e.g. Innovation Fund, Just Transition Fund, etc.) are not available for reaching the same targets.

a. Incentive effect

We fully agree with the Commission's provision that "aid must not compensate for the normal business risk of an economic activity" (point 26). Short-sighted decisions made by managements that ignored the clear regulatory and market signals that for years have been pushing towards the greening of our economy shall not be rewarded.

We also welcome the provision in point 31, stressing that "only aid to go beyond Union standards can have an incentive effect". In this respect, the aid shall demonstrate to be additional to current Union standards and provide wider innovation and replication effect at EU level.

Moreover, we invite the Commission to assess the incentive effect also through the following criteria:

- Positive condition: the aid shall substantially contribute to the achievement of all the environmental objectives set in art. 3 of Regulation 2020/852 (Taxonomy).
- **The factual situation should assume a compliance scenario that could be achieved by full implementation of relevant Union Standards** (e.g. compliance with the stricter range set out in those standards, as in the amendment proposal in the definition) **and assume full negative externalities internalisation**. Whether we strongly support recital 31, on the other hand the European Commission should check what the real incentive effects are compared to the real situation on the ground, not only as to what the Union Standards provide. Otherwise, it is unclear on what is meant concretely with the "incentive effect" (see more comments to section 4.2.3 and 4.5.3).
- Based on the above, the requirements set under 3.1.3 "no breach of any relevant provision of Union law" are just a safety net (**negative condition**), as this should be regarded as a given.

b. Necessity of the aid: remedying market failures

We agree with point 34, stressing that "the mere existence of market failures is not sufficient to prove the necessity of State aid". Before asking for State aid, **Member States shall be required to implement all other possible regulatory**

and market avenues to fix market failures, which in most cases are due to failure to internalise external costs such as pollution. This finding “European taxpayers too often have to pay instead of polluters” has been notably confirmed by a recent report by the Court of Auditor⁶.

We call on the European Commission to rigorously enforce the polluter prevention (first) and polluter pays principles within the CEEAG. It is in the European Commission's mandate and responsibility to enforce those key principles underlying EU environment legislation; it is no longer acceptable, nor coherent with the EGD and ZPA targets, that DG Competition takes a narrow approach limited to trade and competition aspects when taking State aid decisions.

The Commission is correct to highlight that the aid for environmental measures is most common due to lack of internalising negative externalities (point 33), **yet the CEEAG fail to require as a pre-condition of access to aid to deal with those failures first.**

When assessing “residual” market failures that might merit State aid, in our opinion the Commission should take into consideration:

- whether the market failure is, actually, a “governance failure”, meaning that the national and/or EU authorities have failed to enforce appropriately EU legislation to address market failures connected to climate and environmental protection;
- whether market operators have put in place any possible means to tackle market failures connected to climate and environmental protection or, instead, they delayed action to then take advantage of State aid;
- whether relevant Union standards have been implemented at their higher pollution prevention potential, even if not mandatory.

The Member State in question should be required to detail what measures have been taken to address those market failures. This should include a minimal list of expectations, notably to justify why other policies and measures have not been fully employed so to achieve the same results without relying on State aid.

⁶ Special Report 12/2021: The Polluter Pays Principle: Inconsistent application across EU environmental policies and actions

This should include pollution prevention standards, emission limit values, other operating conditions from national legislation, levies / carbon taxes, charge or taxation systems that may affect the operation of a harmful human activity.

This evidence of full use of all available measures shall also be quantified on the basis of a common criteria to evaluate costs and benefits (see new proposed Annex III). **As highlighted in point 34, State aid should address only “residual failures” and must reinforce and not counteract other policies.**

In EEB’s opinion there is a strong counteracting with the polluter pays and prevention at source principle when State aid is provided without pre-condition to full use of other measures (as precited) readily available to decision makers. Hence, there is a strong link with the “appropriateness’ of the choice of measures taken.

c. Appropriateness

We strongly support points 39 and 41, stating that State aid is not an appropriate instrument to address cases where polluters must be held liable for the pollution, according to the “polluter pays principle”.

Contrary to what is claimed in point 40, the EU ETS does not counter the problem of externalities, since it does not recover in full the externalities of climate change caused by the limited coverage of GHG emissions from the EU ETS installations. DG COMP should be aware of the DG MOVE findings⁷, which suggests that the central GHG damage cost estimate is 105 € / tCO₂eq whereas the high estimate is **199 €/tCO₂eq in the short to medium term**, whilst the longer-term climate change avoidance costs will be at **283 €/tCO₂eq (central) and 524 €/tCO₂eq (high estimate)** for the 2040 to 2060 term. Moreover, according to an OECD report on carbon pricing policies⁸, prices are “still well below estimates of the real cost to the planet of CO₂ emissions” and that “120 €/t CO₂eq is a central estimate of the carbon price needed in 2030 to decarbonise by mid-century under the assumption that carbon pricing plays a major role in the overall decarbonisation effort. The 120 € /t CO₂eq damage cost estimate in 2030 is also more in line with recent estimates of overall social carbon costs”.

⁷ <https://www.eionet.europa.eu/etcs/etc-atni/products/etc-atni-reports/etc-atni-report-04-2020-costs-of-air-pollution-from-european-industrial-facilities-200820132017>

⁸ OECD, Effective Carbon Rates 2021: <https://www.oecd.org/tax/tax-policy/effective-carbon-rates-2021-highlights-brochure.pdf>

The proposed CEEAG would apply as from 2022 and possibly up to 2030, unless an earlier revision will take place. **This means that a short-to-medium-term cost estimate of 120 to 199 €/tCO₂eq is adequate to consider for this period.** The current and expected EUA EU-ETS carbon price increase forecasts are rather around 50 €/tCO₂eq by EU ETS. **In short, the EU ETS is nowhere near to counter the problem of externalities to the real extent of the externalities of climate change incurred costs.**

Moreover, a recent report by the European Court of Auditors⁹ found out that “the ELD (Directive 2004/35/CE, Environmental Liability Directive) had not resolved key weaknesses” and even that “the EU budget is sometimes used to fund clean-up actions that should, under the PPP, have been borne by polluters”.

In our opinion, this is an unacceptable use of public money; therefore, we invite the Commission to assess State aid cases against the “polluter pays principle” enshrined in the TFEU, which was weakly transposed in the ELD, at least until the regulator will fix the ELD's weaknesses.

The findings in point 41 (rectifying the failures against the PPP) are not addressed in the CEEAG. Therefore, we call on the European commission to assess:

- whether market operators benefitting from State aid do not already benefit from other financial support schemes;
- whether pollution prevention and climate protection standards have been rigorously enforced beyond the minimal allowed levels;
- whether Member States have taken action to correctly factor in (see new Annex III) and recover negative externalities from polluters through taxation, pollution charges or equivalent measures.

d. Proportionality

While agreeing that, in principle, bidding processes would be helpful in reducing the aid to the minimum, in certain cases the nature of a certain market sector (e.g. energy generation from coal) would prevent a meaningful competition. On the other hand, compensation models (point 53) often result in exaggerated amount

⁹ <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58811>

of State aid going to market operators with little and insufficient information on how such compensations have been calculated¹⁰.

In order to prevent a waste of taxpayers' money, we invite the Commission to use the following criteria to assess the proportionality of State aid, in particular concerning compensation schemes:

- when designing the counterfactual scenario, inclusion and subtraction from the aid of negative externalities to water, air and soil, direct and indirect subsidies, tax exemptions (see new Annex III);
- transparency of the calculations of compensations, which should be fully transparent and not shielded behind confidential business information issues;
- "Best value for money" test: the beneficiary should demonstrate that the aid will provide the optimum value in terms environmental and climate protection. We strongly support the inclusion of environmental, social, public health and climate protection selection criteria in all the processes, and not only "in a few exceptional cases" (point 49). For instance:
 - The following measures shall be prioritised over new energy generation projects: energy efficiency, energy storage, better use of already-existing energy generation through improvements of grids and exports of possible surplus of renewable energy towards countries with lower RES capacity. Energy efficiency measures should be prioritised over new energy generation (see point 38 as to the hierarchy of pollution prevention action).
 - The compatibility with relevant environmental quality standards objectives should be required, as well as the assessment on how the aid will constitute an "enabling activity" according to Regulation 2020/852.

In any case, State aid shall not be considered proportionate when rewarding Business As Usual (BAU) practices or prolong operations beyond the Return of Investment point.

The EEB disagrees with the provisions set under points 48 and 49, which do favour "a competitive bidding process" based on reductant and narrow "price selection

¹⁰ See notably the German lignite state aid case as an illustration <https://eeb.org/library/eeb-contribution-on-the-case-of-german-state-aid-to-leag-and-rwe/>

criteria". **More weight is to be provided on targets and outcome-oriented criteria that ensure that all negative externalities are fully integrated as well as other impacts of the State aid measure (social, wider sustainability of economic development).** The current proposal is considering those important criteria only on a "exceptional case" and for not more than 25% as to the weighing criteria.

Reducing the "proportionality" of aid schemes to best price ratio expected under bidding processes is a too reductant approach if potential benefits / gains of various solutions options considered under the State aid (e.g. benefits from avoided pollution) are not properly rated and priced for (see Annex III). In such cases, such other criteria must account proportionately to the objective it aims to achieve when weighed against other selection criteria and the need to ensure competition.

Experience in other areas have also shown that bidding / tender approaches are not the most ideal way forward to promote uptake by many economic actors to deliver a desired solution: companies with a strong market position may undercut the competitors in the bidding by providing artificially lower bids, therefore harming competition. "Local economy preference" of equal service bidders should be considered.

As an illustration, the most successful approach as to the uptake of renewable energy technologies has been the German feed-in-tariffs scheme, providing a premium for solar (PV) energy that was needed to get the market readiness of those options. The RES industry of Europe crashed after Member States took the bidding approach DG COMP seems to favour, because more "cost effective". This approach may possibly be more "cost effective", but it is not the most effective approach to deliver a desired outcome for the EU economy, especially if other negative externalities are not adequately priced.

e. Transparency

The proposed approach as to transparency developed in section 3.2.1.4 is insufficient and needs rectification.

Full transparency is only foreseen when decisions on State aid have been adopted by the European Commission, not when decisions are still open.

In order to enable for the public to have a meaningful and timely public participation (as per Aarhus Convention that means when options are still open) the transparency provisions shall apply as from the date when the full

documentation has been received by the Commission services and the State aid consideration procedure is starting.

Points 59 and 60 should be amended and require publication at least 3 months prior to the data of taking a decision on the said state aid.

Whenever a fast-track decision is needed so to protect the environment / human health in terms of unforeseeable events (*force majeure*), alternative solutions should be found to enable effective public participation.

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

Competition and trade are important part of the EU, but there are other equally important principles that shall not be overruled by competition law, such as the precautionary principle, the preventive action principle and the polluter pays principle (art. 191 (2) TFEU). **The Treaty itself correctly affirms that Member States should be able to take measures going beyond pure economic considerations to pursue environmental protection.**

While EU competition policy is a cornerstone of the EU Treaties, it cannot undermine the Union's environmental ambitions. Pollution, the destruction of nature, waste of resources and climate change each have significant economic costs for communities and have a negative impact on the EU's internal market. Consequently, when assessing competition and the internal market, the Commission must uphold its role as the "Guardian of the Treaties" and integrate environmental policy and other Union ambitions to ensure there is full policy coherence.

The Guidelines should in no way continue supporting fossil fuels, which are the main cause of not accounting of negative externalities and, consequently, of market failures. Concerning natural gas, even though the Commission recognises that the lock-in effect should be prevented (point 71), it does not provide any definition of lock-in, leaving the doors open to potentially useless investments in gas infrastructure that will become obsolete in a decade or so. A lock-in definition should establish clear dates for fossil fuels phase out within this decade to prevent an unacceptable waste of public resources, that should instead be channelled towards clean alternatives and energy demand reduction projects.

5. Categories of aid

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

The CEEAG will have to put the EU on a path to meet the 1.5C climate objective set by the Paris Agreement. This will require phasing out all fossil fuels in the EU by 2035 at the latest. The CEEAG will also play a key role in driving a green recovery and avoiding that public money is spent to subsidise environmentally unsustainable economic activities.

The CEEAG must be fully aligned with the provisions on climate tracking and DNSH set in the EU's Recovery and Resilience Facility Regulation. Therefore, no public money should be granted to support fossil-fuel based economic activities or activities that do significant harm to the environment.

No type of aid for fossil fuels (including natural gas) should be allowed: low carbon fuels, fossil-based hydrogen + CCS, aid to energy-intensive industries which still use fossil fuels as energy source (since this is an indirect aid to fossil fuels). We also do not support aid to CCS/CCU as these technologies are expensive and will be used to keep fossil fuels in the system for the next decades.

We do not support aid to new investments in natural (fossil) gas-based generation or industrial production infrastructure, even though this aid would require a "public consultation" as set in the CEEAG. The public consultation provision is very general and leaves room for too much flexibility for Member States.

By experience with the National Recovery and Resilience Plans, we are very concerned with widespread lack of transparency, structure and governance of the public consultation processes undertaken by the Member States. We strongly advocate for transparent processes; whereas the Commission allows for "alternative methods of consultation" with interested parties, it does not specify who the "interested parties" would be, thus leaving too much discretion in the hands of national governments (see related points made under Section 4(e) (transparency)).

The provision that Member States should explain how a lock in of a gas-fired energy generation or gas-fired production equipment will be avoided is of high concern. Especially as the Commission includes 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 as enabling conditions for this type of aid.

Absence of lock in effect can be demonstrated only by setting clear phase-out dates for use of fossil fuels by 2035 at the latest, which is required to meet the 1.5C climate objective, and this tight timeline, as well as its disastrous track-record in terms of in-effectiveness in the last decade, does not justify investments in expensive technologies such as CCS/CCU.

Aid to cogeneration should be granted only when cogeneration is fossil-fuel free and aid to biomass only when other (non-combustion type of) renewable alternatives are not possible.

Finally, we believe that new hydropower facilities should not be eligible to state aid. State aid should be limited to the refurbishment or closure of existing hydropower facilities which are in line with environmental requirements and have a capacity above 10 MW, when it is demonstrated that the refurbishment or closure contributes to the achievement of a good water status, as per the Water Framework Directive.

There should be no feed-in tariffs for existing micro-hydropower plants, as those feed-in tariffs have facilitated the continuous development of many facilities below 0.5 MW, with negligible electricity production but disastrous environmental impacts. Environmental legislation and nature protection should be more streamlined into the CEEAG. The nature protection dimension should be on the same footing as climate mitigation and pollution prevention.

Building new hydropower plants runs directly counter to the commitments expressed in the EU Biodiversity Strategy's proposal to restore at least 25,000 km of free-flowing rivers, and is incompatible with the achievement of a good status of water bodies by 2027 as required under the Water Framework Directive (WFD).

State aid has been one of the drivers of hydropower development in Europe in the past years, especially small hydropower development.

However, the contribution which new hydropower can make to the energy transition in Europe is negligible. 91% of existing and planned hydropower plants in Europe are small (capacity <10 MW). According to the EEB/CAN Europe Paris

Agreement Compatible Energy scenario¹¹, the share of hydropower in Europe's electricity generation is expected to decrease from the current 10% to 4-6% after 2035, partly because of the impacts of climate change, partly because of the obligations imposed by the environmental legislation.

The reference to the Water Framework Directive (WFD) in the 2014-2020 EEAG (point 117) has not been sufficient to ensure that hydropower installations do not induce deterioration of the water status, and do not jeopardize existing river restoration efforts. In many cases, efforts of plant operators to comply with the WFD is limited to the installation of basic fish passes that have extremely limited efficiency and do not significantly reduce fish mortality, let alone limit the destruction of habitats, sediment and ecological flows. Cases of hydropower plants receiving tariffs or premiums despite breaching the WFD article 4(7) have been reported in several countries.

Hydropower plants have dramatic impacts on freshwater biodiversity as they hamper fish migration and breeding, disturb ecological flow, damage habitats, and alter sediment transport. Measures to mitigate the negative impacts of hydropower plants on biodiversity only have limited efficiency, so investing in this type of measures can only marginally reduce adverse impacts on ecosystems.

b. Aid for the improvement of the energy and environmental performance of buildings

	Draft CEEAG	EEB text amendments
4.2.1	<i>Rationale for the aid</i>	<i>Rationale for the aid</i>
114	Measures aimed at improving the energy and environmental performance of buildings target negative externalities by creating individual incentives to attain targets for energy savings and for the reduction of greenhouse gas and air pollutant emissions. In addition to the general market failures identified in Chapter 3, specific market failures	Measures aimed at improving the energy and environmental performance of buildings target negative externalities by creating individual incentives to attain targets for energy savings and for the reduction of greenhouse gas and air pollutant emissions in both operational energy-use and embodied impacts . In addition to

¹¹ <https://eeb.org/library/building-a-paris-agreement-compatible-pac-energy-scenario/>

	<p>may arise in the field of energy and environmental performance in buildings. For instance, when renovation works in buildings are considered, the benefits of energy and environmental performance measures do not typically accrue only with the building owner, who generally bears the renovation costs, but also with the tenant. The Commission therefore considers that State aid may be needed to promote investments aimed at improving the energy and environmental performance of buildings.</p>	<p>the general market failures identified in Chapter 3, specific market failures may arise in the field of energy and environmental performance in buildings. For instance, when renovation works in buildings are considered, the benefits of energy and environmental performance measures do not typically accrue only with the building owner, who generally bears the renovation costs, but also with the tenant. The Commission therefore considers that State aid may be needed to promote investments aimed at improving the energy and environmental performance of buildings, avoiding potential renoventions generated by the renovation of buildings.</p>
	<p style="text-align: center;"><i>Justification</i></p> <p><i>A holistic approach to the energy and environmental performance of buildings should be considered. Focusing on the operational phase tackles just one of the stages of the value chain of buildings and does not consider the GHG emissions generated in scope 3 (manufacturing, transport...). A Whole Lifecycle perspective of energy consumption and GHG emissions should be considered for meriting state aid support.</i></p> <p><i>On the other hand, the socio-economic perspective should be included to avoid renoventions¹² and support vulnerable and low-income households. Specific measures to avoid these processes should be included.</i></p>	
4.2.2	<i>Scope and activities supported</i>	<i>Scope and activities supported</i>
115	Aid may be granted for the improvement of the energy efficiency of buildings.	Aid may be granted for the improvement of the energy efficiency of buildings and the reduction of GHG emissions in the whole lifecycle of buildings.

¹² Renovations leading to evictions

	<p><i>Justification</i></p> <p><i>The improvement of energy efficiency in buildings cannot have a rebound in GHG emissions, as it does not include the environmental impact of these processes. GHG emissions in the whole lifecycle (WLC) of buildings should be included as part of the improvement of energy efficiency.</i></p>	
116	<p>This aid may be combined with aid for any or all the following measures:</p> <p>(a) the installation of integrated on-site renewable energy installations generating electricity, heat or cold;</p> <p>(b) the installation of equipment for the storage of the energy generated by on-site renewable energy installations;</p> <p>(c) the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, where the car park is located either inside the building or it is physically adjacent to the building;</p> <p>(d) the installation of equipment for the on-site digitalisation of the building, in particular to increase its smart readiness. Eligible investments may include interventions limited to passive in-house wiring or structured cabling for data networks and, if necessary, the ancillary part of the passive network on the private property outside the building. Wiring or cabling for data networks outside the private property is excluded;</p> <p>(e) other investments that improve the energy or environmental performance of the building, including investments in green roofs and equipment for the recovery of rain water.</p>	<p>This aid may be combined with aid for any or all the following measures:</p> <p>(a) the installation of integrated on-site renewable energy installations generating electricity, heat or cold;</p> <p>(b) the installation of equipment for the storage of the energy generated by on-site renewable energy installations;</p> <p>(c) the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, where the car park is located either inside the building or it is physically adjacent to the building;</p> <p>(d) the installation of equipment for the on-site digitalisation of the building, in particular to increase its smart readiness. Eligible investments may include interventions limited to passive in-house wiring or structured cabling for data networks and, if necessary, the ancillary part of the passive network on the private property outside the building. Wiring or cabling for data networks outside the private property is excluded;</p> <p>(e) other investments that improve the energy or environmental performance of the building, including investments in green roofs and equipment for the recovery of rain water.</p>

		<p>(f) Nature-based solutions that improve the energy efficiency of buildings, reducing the GHG emissions and other pollution in their whole lifecycles. These measures should be based on a whole life cycle assessment to ensure that the materials and products used in these activities do not generate more pollution, both in buildings and construction materials.</p>
	<p><i>Justification</i></p> <p><i>See previous justifications on WLC. Regarding measures, nature-based solutions should be considered as they are the most sustainable strategy to improve the performance of buildings, reducing the environmental impacts generated by these interventions.</i></p>	
117	<p>Aid may also be granted for the improvement of the energy efficiency of the heating or cooling equipment inside the building. Aid for the improvement of the energy efficiency of production processes and for energy-generating equipment used to power machinery is not covered by this Section but may be covered by Section 4.1. Aid for heating or cooling equipment related to district heating systems is covered by Section 4.10.</p>	<p>Aid may also be granted for the improvement of the energy efficiency of the heating or cooling equipment inside the building, <u>excluding the use of fossil fuels, including H2 use for direct heating.</u> Aid for the improvement of the energy efficiency of production processes and for energy-generating equipment used to power machinery is not covered by this Section but may be covered by Section 4.1. Aid for heating or cooling equipment related to district heating systems is covered by Section 4.10.</p>
	<p><i>Justification</i></p> <p><i>Heating and cooling equipment must not use fossil fuels and H2 for direct heating. This must be clear in all the aid requirements to avoid misunderstanding the environmental objectives on the decarbonization of the buildings stock.</i></p>	

118	<p>The aid must induce:</p> <p>(a) in the case of renovation of existing buildings, energy performance improvements leading to a reduction in primary energy demand of at least 20 % as compared to the situation prior to the investment. By way of derogation, where the improvement is part of a staged renovation, the latter must lead to an overall reduction in primary energy demand of at least 30 % as compared to the situation prior to the investment, over a period of 3 years;</p> <p>(b) in the case of new buildings, energy performance improvements leading to at least 10 % of primary energy savings compared to the threshold set for the nearly zero-energy building requirements in national measures implementing Directive 2010/31/EU of the European Parliament and of the Council⁶⁵.</p>	<p>The aid must induce:</p> <p>(a) in the case of renovation of existing buildings, energy performance improvements leading to a reduction in primary energy demand of at least <u>20-60</u> % as compared to the situation prior to the investment, <u>through one-step deep renovations and including minimum circularity requirements on the use of a volume % of local reused and recycled materials. In case it is not possible to promote one-step deep renovations, staged deep renovations must present a staged renovation project to achieve Minimum Energy Performances (as per art. 2 (4) of the Directive 2010/31/EU of the European Parliament and of the Council), including a multi-stage deep renovation plan with connected steps to ensure cost economies and maximum efficiency improvements supported by data tool. These staged renovations must lead to an overall reduction in primary energy demand of at least 30 % as compared to the situation prior to the investment, over a period of 3 years. By way of derogation, where the improvement is part of a staged renovation, the latter must lead to an overall reduction in primary energy demand of at least 30 % as compared to the situation prior to the investment, over a period of 3 years;</u></p>
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		(b) in the case of new buildings, energy performance improvements leading to at least 10 % of primary energy savings compared to the threshold set for the nearly zero-energy building requirements in national measures implementing Directive 2010/31/EU of the European Parliament and of the Council. Without prejudice to complying with the Nearly Zero Energy Building requirement, the building should comply with the Zero Emission Building requirement, when available.
	<p><i>Justification</i></p> <p><i>In the current situation, deep renovations ensure at least a 60% minimum improvement of energy performance. However, one-step deep renovations are cheaper for the citizen in the long term and ensure a coherent intervention in buildings. One-step deep renovations should ensure at least: (i) a 60% of minimum improvement of energy performance, increasing to at least 75% by 2030 and lifecycle decarbonisation in a single intervention, (ii) a minimum circularity requirement including the use of a percentage of local, reused and recycled materials. Only deep one-step renovations should be considered eligible for State aids, being able to deliver the best value for money in terms of cost economies and efficiency improvements. Deep one-step renovations must include a staged renovation project to achieve MEPS, including a multi-stage deep renovation plan supported by data tool.</i></p> <p><i>Furthermore, the NZEB definition is not Paris compliant. In the last open consultation for the EPBD, a new definition has been proposed, Zero Emissions Buildings, including both embodied and operation emissions. This new definition has still to be launched, but it shall be used as soon as available.</i></p>	
119	Aid for the improvement of the energy performance of buildings may also be granted to SMEs and small mid-caps that are providers of energy performance improvement measures for the facilitation of energy performance contracting	Aid for the improvement of the energy performance of buildings may also be granted to SMEs and small mid-caps that are providers of energy performance improvement measures for the facilitation of the reduction of GHG emissions on the whole

	within the meaning of Article 2, point (27) of Directive 2012/27/EU.	lifecycle of buildings and energy performance contracting within the meaning of Article 2, point (27) of Directive 2012/27/EU.
	<i>Justification</i> <i>See previous justifications on WLC.</i>	
4.2.3	<i>Incentive effect</i>	<i>Incentive effect</i>
4.2.4	<i>Minimisation of distortions on competition and trade</i>	<i>Minimisation of distortions on competition and trade</i>
4.2.4.1	<i>Appropriateness</i>	<i>Appropriateness</i>
124	Aid for the facilitation of energy performance contracting may take the form of a loan or guarantee to the provider of the energy performance improvement measures under an energy performance contract, or consist in a financial product aimed to refinance the respective provider (for example, factoring or forfeiting).	Aid for the facilitation of energy performance contracting may take the form of a loan or guarantee to the provider of the energy performance improvement measures under an energy performance contract, or consist in a financial product aimed to refinance the respective provider (for example, factoring or forfeiting). A whole lifecycle assessment of the intervention and the building must be included to ensure there are no rebounds of GHG emissions.
	<i>Justification</i> <i>See previous justifications on WLC.</i>	
4.5.4.2	<i>Proportionality</i>	<i>Proportionality</i>
125	The eligible costs correspond exclusively to the investment costs directly linked to the achievement of a higher level of energy or environmental performance.	The eligible costs correspond exclusively to the investment costs directly linked to the achievement of a higher level of energy or and environmental performance, including a higher-level reduction of GHG embodied emissions in the whole lifecycle of the building.
	<i>Justification</i>	

	<i>See previous justifications on WLC.</i>	
127	As regards aid granted for improving the energy performance of existing buildings, the aid intensity may be increased by 15 percentage points where the energy performance improvements lead to a reduction of primary energy demand of at least 40 %.	As regards aid granted for improving the energy performance of existing buildings, the aid intensity may be increased by 15 percentage points where the energy performance improvements lead to a reduction of primary energy demand of at least 40-60 % as well as zero-carbon renovations are ensured through the elaboration of a whole lifecycle assessment.
	<i>Justification</i> <i>See previous justifications on deep renovations and WLC assessment.</i>	
131	Where the aid is granted following a competitive bidding process conducted in accordance with the criteria in points 48 and 49, the aid amount is considered proportionate.	Where the aid is granted following a competitive bidding process conducted in accordance with the criteria in points 48 and 49 and the relevant Green Public Procurement criteria¹³ , the aid amount is considered proportionate.
	<i>Justification</i> <i>The Green Public Procurement can facilitate this process to ensure a high quality of environmental requirements in buildings. The requirements presented in points 48 and 49 are not enough to ensure a good environmental performance of buildings.</i>	
132	Aid granted in the form of financial instruments is not subject to the maximum aid intensities set out in points 126 to 130. Where the aid is granted in the form of a guarantee, it should not exceed 80 % of the underlying loan. The repayment by the building owners to the energy efficiency or renewable energy fund or other financial intermediary must at least equal the nominal value of the loan.	Aid granted in the form of financial instruments is not subject to the maximum aid intensities set out in points 126 to 130. Where the aid is granted in the form of a guarantee, it should not exceed 80 % of the underlying loan. The repayment by the building owners to the energy efficiency or renewable energy fund or other financial intermediary must at least equal the nominal value of the loan,

¹³ https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm

		excluding for this requirement the low income and vulnerable households that should be exempt for this payment.
	<p><i>Justification</i></p> <p><i>The socioeconomic perspective for the low-income and vulnerable households is not included in this point. The building stock should be renovated, and access to grants and loans is difficult for most people without financial resources. Specific measures that ensure the access of low-income and vulnerable households should be included to facilitate a real transformation of the building stock.</i></p>	
4.2.5	<i>Avoidance of undue negative effects on competition and trade and balancing</i>	<i>Avoidance of undue negative effects on competition and trade and balancing</i>
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	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 distorts 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 therefore not consider eligible whether the natural gas-fired equipment to

	most polluting fossil fuels, such as oil and coal.	replace energy equipment using the most polluting fossil fuels, such as oil and coal.
	<p style="text-align: center;"><i>Justification</i></p> <p><i>Although this paragraph presents the disadvantages and negative effects of using natural gas-fired equipment, it should be clear that the Commission will not approve the replacement of energy equipment with natural gas-fired equipment or any other kind of fossil fuel system for heating and cooling.</i></p>	
136	<p>Where the aid is granted in the form of an endowment, equity, a guarantee or a loan to an energy efficiency or renewable energy fund or another financial intermediary, the Commission will verify that conditions are in place to ensure that the energy efficiency or renewable energy fund or other financial intermediaries do not receive any undue advantage and apply a commercially sound investment strategy for the purpose of implementing the energy performance aid measure. In particular, the following conditions must be fulfilled:</p> <p>(a) financial intermediaries or fund managers must be selected through an open, transparent and non-discriminatory process which is made in accordance with applicable Union and national laws;</p> <p>(b) conditions are in place to ensure that financial intermediaries, including energy efficiency or renewable energy funds, are managed on a commercial basis and will ensure profit-driven financing decisions;</p> <p>(c) the managers of the energy efficiency or renewable energy fund or other financial intermediaries pass the advantage on to the largest</p>	<p>Where the aid is granted in the form of an endowment, equity, a guarantee or a loan to an energy efficiency or renewable energy fund or another financial intermediary, the Commission will verify that conditions are in place to ensure that the energy efficiency or renewable energy fund or other financial intermediaries do not receive any undue advantage and apply a commercially sound investment strategy for the purpose of implementing the energy performance aid measure. In particular, the following conditions must be fulfilled:</p> <p>(a) financial intermediaries or fund managers must be selected through an open, transparent and non-discriminatory process which is made in accordance with applicable Union and national laws;</p> <p>(b) conditions are in place to ensure that financial intermediaries, including energy efficiency or renewable energy funds, are managed on a commercial basis and will ensure profit-driven financing decisions;</p> <p>(c) the managers of the energy efficiency or renewable energy fund or other financial intermediaries pass the advantage</p>

	<p>extent possible to the final beneficiaries (the building owners or tenants), in the form of higher volumes of financing, lower collateral requirements, lower guarantee premiums or lower interest rates.</p>	<p>on to the largest extent possible to the final beneficiaries (the building owners or tenants), in the form of higher volumes of financing, lower collateral requirements, lower guarantee premiums or lower interest rates.</p> <p>(d) For low-income and vulnerable households, the process should ensure free access to this aid through public grants at better conditions.</p>
	<p><i>Justification</i></p> <p><i>See previous comments on the socioeconomic perspective for the low-income and vulnerable households in renovations.</i></p>	

c. Aid for resource efficiency and for supporting the transition towards a circular economy

The EEB supports the position of the European Commission, particularly point 218, except for the following points, for which we propose amendments:

194	<p>Aid relating to the recovery of residual heat from production processes or aid relating to CCU will be assessed under the conditions applicable to aid for the reduction of greenhouse gas emissions set out in Section 4.1.</p>	<p>Aid relating to the recovery of residual heat from production processes or aid relating to CCU will be assessed under the conditions applicable to aid for the reduction of greenhouse gas emissions set out in Section 4.1. Aid shall not be provided for recovery of residual heat from waste (co) incineration.</p>
203	<p>Aid may be considered necessary only where the waste or other substances or materials would otherwise be disposed of, would be treated based on a treatment operation that is situated lower in the priority order of the waste hierarchy or in a less resource-efficient manner or would otherwise be unused.</p>	<p>Aid may be considered necessary only where the waste or other substances or materials would otherwise be disposed of in a landfill or in an incinerator, with or without energy recovery, as these are operations situated at a lowest level in priority order of the waste hierarchy., would be treated based on a treatment</p>

		operation that is situated lower in the priority order of the waste hierarchy or in a less resource-efficient manner or would otherwise be unused.
205	In the case of aid for the separate collection and sorting of waste or other products, materials or substances, the Member State must demonstrate that such separate collection and sorting is underdeveloped in that Member State. Where aid to cover operating costs is granted, the Member State must demonstrate that such aid is required during a transitional period to facilitate the transition towards circular economy, including and not limited to the preparing for re-use, the preparing for recycling, or recycling. The Member State must take into account any obligations under extended producer responsibility schemes.	In the case of aid for the separate collection and sorting of waste or other products, materials or substances, the Member State must demonstrate that such separate collection and sorting is underdeveloped in that Member State and that it will not lead to a perpetration of harmful activities, such as coal extraction. Where aid to cover operating costs is granted, the Member State must demonstrate that such aid is required during a transitional period to facilitate the transition towards circular economy, including and not limited to the preparing for re-use, the preparing for recycling, or recycling. The Member State must take into account any obligations under extended producer responsibility schemes.
207	In accordance with the 'polluter pays' principle, undertakings generating waste should not be relieved from the costs of waste treatment. The aid should therefore not relieve undertakings that generate waste from any costs or obligations relating to the treatment of waste for which they are liable under Union or national law, including under extended producer responsibility schemes. In addition, the aid should not relieve undertakings from costs that should be considered as normal costs for an undertaking.	In accordance with the 'polluter pays' principle, undertakings generating waste should not be relieved from the costs of waste treatment. The aid should therefore not relieve undertakings that generate waste from any costs or obligations relating to the treatment of waste for which they are liable under Union or national law, including under extended producer responsibility schemes. In addition, the aid should not relieve undertakings from costs that should

		be considered as normal costs for an undertaking.
207 (a)		NEW Greenhouse gases generated by human activity shall always be considered as “waste generation” for the purpose of these Guidelines. The conditions applicable to aid for supporting the transition towards a circular economy set out in section 4.4. shall apply in addition so Section 4.1. Re-use of greenhouse gases shall not be considered eligible for State aid, unless for innovative projects aimed at keeping them in the ground.
209	Where the product, substance or material would constitute waste unless re-used and there is no legal requirement for that product, substance or material to be disposed of or otherwise be treated, the eligible costs may correspond to the investment necessary to recover the product, substance or material concerned.	Where the product, substance or material, with the exception of greenhouse gases , would constitute waste unless re-used and there is no legal requirement for that product, substance or material to be disposed of or otherwise be treated, the eligible costs may correspond to the investment necessary to recover the product, substance or material concerned.
218	The aid must not incentivise the generation of waste.	The aid must not incentivise the generation of waste, nor the generation of greenhouse gases, even when re-usable.
<p><i>Justification for amendments 205, 207, 207 (a), 209, 218</i></p> <p><i>As correctly stated by the Commission, aid shall not lead to more waste. We would include in the definition also that waste that, when reused, perpetrate an economy based on fossil fuels, such as methane leaking from coal mines. Even though it would be better to reuse the leaked methane instead of letting it disperse in the atmosphere, such a by-product could lead to the perpetration of coal mining with</i></p>		

the scope of extracting methane, which is not acceptable. We would rather encourage operators to invest in research to seal coal mines and keep methane in the ground.

d. Aid for the prevention or the reduction of pollution other than from greenhouse gases

	Draft CEEAG	EEB text amendments
4.5.1	<i>Rationale for the aid</i>	
222	<p>The Green Deal Communication's zero pollution ambition for a toxic-free environment should ensure that, by 2050, pollution is reduced to levels no longer harmful for humans and natural ecosystems and that respect the boundaries our planet can cope with, thus creating a toxic-free environment, in line with the 2030 Agenda for Sustainable Development and the long-term objectives of the 8th Environment Action Programme. The Union has set out specific targets for reducing the level of pollution, such as for cleaner air and for zero pollution of water bodies, less noise, plastic litter and microplastics pollution and waste, as well as targets for excess nutrients and fertilizers, hazardous pesticides and substances causing antimicrobial resistance.</p>	<p>The Green Deal Communication's zero pollution ambition for a toxic-free environment should ensure that, by 2040, pollution and other negative environmental impacts are first prevented, and where not feasible reduced to levels no longer harmful for humans and natural ecosystems and that respect the boundaries our planet can cope with, thus creating a toxic-free environment, in line with the 2030 Agenda for Sustainable Development and the long-term objectives of the 8th Environment Action Programme. The Union has set out a clear pollution prevention at source hierarchy and specific targets for reducing the level of pollution, such as for cleaner air and for zero pollution of water bodies, less noise, plastic litter and microplastics pollution and waste, as well as targets for excess nutrients and fertilizers, hazardous pesticides and substances causing antimicrobial resistance.</p>
<i>Justification</i>		

The text edits reflect the pollution prevention hierarchy of measures set out in the ZPAP and the TFEU requiring pollution prevention at source first over control (reduction) of impact measures

223	Financial support in the form of State aid can contribute substantially to the environmental objective of reducing forms of pollution other than from greenhouse gas emissions.	Financial support in the form of State aid can contribute substantially to the environmental objective of reducing any forms of pollution and negative environmental impacts, when achieving a high general level of protection for the environment as a whole, including the climate other than from greenhouse gas emissions.
	<p><i>Justification</i></p> <p><i>A silos approach on achieving environmental protection by taking a separate approach on climate protection is counterproductive and not aligned to the integrated approach of preventing pollution at source. For this reason, climate relevant impacts are to be included under this section as well (e.g. energy use, type of fuel use, GHG emissions co-abated thanks to stricter air pollution controls or process switch). This amendment links very closely to point 228. In the viewpoint of the EEB state aid need to be aligned to both the wider zero pollution ambition (which included climate) and the climate protection as a goal on its own within the ZPA. Hence, there is no reason to differentiate or artificially split the conditions on granting State aid</i></p>	
4.5.2	<i>Scope and activities supported</i>	
224	Aid for the prevention or the reduction of pollution other than from greenhouse gases may be granted for investments enabling undertakings to go beyond Union standards for environmental protection, to increase the level of environmental protection in the absence of Union standards or to comply with Union standards that are not yet in force.	Aid for the prevention or the reduction of pollution other than from greenhouse gases may be granted for investments enabling undertakings to go beyond Union standards for environmental protection, in the case of EU BREFs¹⁴ this means beyond the stricter BAT-AE(P)L ranges set for 'new' installations, where differentiated , to increase the level of environmental protection in

¹⁴ <https://eippcb.jrc.ec.europa.eu/reference>

		<p>the absence of Union standards or to comply with revised stricter Union standards that are not yet in force within 6 years from the date of the state aid application. The aid may not be granted to a utility or company that benefits from an Article 15(4) or Chapter III derogation pursuant to Directive 2010/75/EU, irrespective of whether the state aid corresponds to the same industrial activity in question and whether that derogation has been granted in another Member State.</p>
	<p style="text-align: center;"><i>Justification</i></p> <p><i>The amendment links to the amendments proposed in terms of reference to the Union Standards in the context of the EU BREFs. The EU BREFs BAT levels are based on existing operation deemed technically and economically viable already, there are very wide performance ranges. True BAT correspond to the strict BAT-AE(P)L levels set for 'new' installations, where differentiated (again in fact the data is based on existing plants), the meaning of "beyond Union Standards" needs to be explicitly clear. For many EU BREFs (e.g. LCP, CLM, REF, IRPP) a differentiation of standards is made for "new" compared to "existing" plants/installations/units/farms. The current approach of Member States is to systematically align to the lenient (upper BAT-AEL) levels, those could claim they go beyond the legally required.</i></p> <p><i>Some Union standards are very old and have been adopted under the IPPC Directive (some date back to 2003), it may be understood by some users of the CEEAG to get state aid to comply with those Union standards, because they are not legally binding / in force under the IED framework. We guess that it was intended to offer state aid for undertakings that anticipate BAT-uptake way ahead of legal deadlines, if that was the case and considering that an EU BREF takes in average 3 years + 4 years compliance deadline then it is appropriate to refer to a 6 year anticipation minimum, otherwise there is no incentive effect. Finally, it is not appropriate to grant a state aid to the same undertakings / Mother companies that make benefits of derogations from those Union standards in any EU country. Those undertakings must demonstrate they comply with union standards in other EU countries as well. The latter is an exclusion condition.</i></p>	

226	The aid must primarily target the prevention or reduction of pollution directly linked to the beneficiary's own activities.	The aid must primarily target the prevention at source and in priority over any reduction of pollution directly linked to the beneficiary's own activities.
227	The aid must not merely displace pollution from one sector to another or from one environmental medium to another (for example, from air to water). Where the aid targets the reduction of pollution, it must achieve an overall reduction of pollution.	The aid must not merely displace pollution from one sector to another or from one environmental medium to another (for example, from air to water). Where the aid targets the reduction of pollution, it must achieve an overall reduction of pollution with residual effects not jeopardising any environmental quality standard.
	<p><i>Justification</i></p> <p><i>The intentions of this provision are fully supported. A stronger link with EQS objectives and demonstrating compliance should be made (target setting).</i></p>	
228	This Section does not apply to aid measures that fall within the scope of Section 4.1. Where a measure contributes to both the reduction of greenhouse gas emissions and the prevention or reduction of pollution other than from greenhouse gas emissions, the compatibility of the measure will be assessed either on the basis of Section 4.1 or of this Section, depending on which of the two objectives is predominant.	This Section does not apply in addition to those set out to aid measures that fall within the scope of Section 4.1. Where a measure contributes to both the reduction of greenhouse gas emissions and the prevention or reduction of pollution other than from greenhouse gas emissions, the compatibility of the measure will be assessed either on the basis of both relevant Sections 4.1 or of this Section, depending on which of the two objectives is predominant.
	<p><i>Justification</i></p> <p><i>(See point 223) A silo approach on achieving environmental protection by taking a separate approach on climate protection is counterproductive and not aligned to the integrated approach of preventing pollution at source. For this reason, climate relevant impacts are to be included under this section as well (e.g. energy use, type of fuel use, GHG emissions co-abated thanks to stricter air pollution controls or process switch). This amendment links very closely to point 228. In the viewpoint of the EEB, State aid needs to be aligned to both the wider</i></p>	

	<i>ZPA (which included climate) and the climate protection. Hence there is no reason to differentiate or artificially split the conditions on granting state aid. Not doing so is counter to the objective of best value to the common interest for money test</i>	
4.5.3	<i>Incentive effect</i>	
230	<p>Aid for investments that enable the beneficiary to exceed the applicable Union standards contributes to the environmental or energy objective. In order not to discourage Member States from setting mandatory national standards which are more stringent than the corresponding Union standards, aid measures may have an incentive effect irrespective of the presence of mandatory national standards that are more stringent than the Union standard. This includes, for instance, measures to improve the water and air quality beyond mandatory Union standards. Such a positive contribution also exists in the presence of mandatory national standards adopted in the absence of Union standards.</p>	<p>Aid for investments that enable the beneficiary to exceed the applicable Union standards contributes to the environmental, climate and/or energy objective. In order not to discourage Member States from setting mandatory national standards which are more stringent than the corresponding Union standards, aid measures may have an incentive effect irrespective of the presence of mandatory national standards that are more stringent than the Union standard. This includes, for instance, measures to improve the water and air quality beyond mandatory performance achieved with strict implementation Union standards. Such a positive contribution also exists in the presence of mandatory national standards adopted in the absence of Union standards.</p> <p>The aid may not be granted to a utility or company that benefits from an Article 15(4) or Chapter III derogation pursuant to Directive 2010/75/EU, irrespective of whether the state aid corresponds to the same industrial activity in question and whether that derogation has been granted in another Member State.</p>
	<i>Justification</i> <i>Whether a standard is mandatory or not (or national/ EU) is not a sufficient criterion to rate environmental performance of a given undertaking as meriting</i>	

	<p><i>state aid support. What matters is the achieved performance level. In order to have true incentive effect a negative condition should be attached to the operator wanting to benefit for the aid, which is aligned to point 227 (overall high level of environmental performance) and the earlier point under 224 (no derogations made in other installations)</i></p>	
231	<p>Aid for the adaptation to Union standards adopted but not yet in force will be considered to have an incentive effect if the investment is implemented and finalised at least 18 months before the Union standards enter into force.</p>	<p>Aid for the adaptation to Union standards adopted but not yet in force will be considered to have an incentive effect if the investment is implemented and finalised at least 6 years before the revised Union standards enter into force.</p> <p>The aid may not be granted to a utility or company that benefits from an article 15(4) or Chapter III derogation pursuant to Directive 2010/75/EU, irrespective of whether the state aid corresponds to the same industrial activity in question and whether that derogation has been granted in another member state.</p>
	<p><i>Justification</i></p> <p><i>Some Union standards (e.g. EU BREFS) are very old and have been adopted under the IPPC Directive (some date back to 2001-2007!), it may be understood by some users of the CEEAG to get state aid to comply with those Union standards, because they are not legally binding / in force under the IED framework. We guess that it was intended to offer state aid for undertakings that <u>anticipate BAT-uptake way ahead of legal deadlines</u>, if that was the case and considering that an EU BREF takes in average 3 years + 4 years compliance deadline then it not appropriate to refer to just 18 months before the revised EU BREF enters into force, that could correspond even to regular EU BREFs revised under the EU (average review time is 3-5 years = 36-90 months) with 4 years compliance deadline = 9 years advanced warning to the industry covered by the IED.</i></p> <p><i>Therefore, it is more appropriate to refer to a 6-year anticipation minimum, otherwise there is no incentive effect.</i></p> <p><i>Finally, it is not appropriate to grant a state aid to the same undertakings / Mother companies that make benefits of derogations from those Union standards in any EU country. Those undertakings must demonstrate they</i></p>	

	<i>comply with union standards in other EU countries as well. The latter is an exclusion condition.</i>	
4.5.4	<i>Minimisation of distortions on competition and trade</i>	
4.5.4.1	<i>Necessity of the aid</i>	
233	<p>For aid in the form of tradable permits, the Member State must demonstrate that the following cumulative conditions are complied with:</p> <p>(a) full auctioning leads to a substantial increase in production costs for each sector or category of individual beneficiaries;</p> <p>(b) the substantial increase in production costs cannot be passed on to customers without leading to significant sales reductions;</p> <p>(c) individual undertakings in the sector do not have the possibility to reduce emission levels in order to make the price of the certificates bearable. Irreducible consumption may be demonstrated by providing the emission levels derived from the best performing technique in the European Economic Area and using them as a benchmark. Any undertaking achieving the best performing technique can benefit at most from an allowance corresponding to the increase in production cost from the tradable permit scheme using the best performing technique, and which cannot be passed on to customers. Any undertaking having a worse environmental performance benefits from a lower allowance, proportionate to its environmental performance.</p>	<p>For aid in the form of tradable permits, the Member State must demonstrate that the following cumulative conditions are complied with:</p> <p>(a) full auctioning leads to a substantial increase in production costs for each sector or category of individual beneficiaries;</p> <p>(b) the substantial increase in production costs cannot be passed on to customers without leading to significant sales reductions;</p> <p>(c) individual undertakings in the sector do not have the possibility to reduce emission levels in order to make the price of the certificates bearable. Irreducible consumption may be demonstrated by providing the performance levels derived from the best performing technique (i.e. technical achievable performance levels) in the European Economic Area and using them as a benchmark. Any undertaking achieving the best performing ing technique level can benefit at most from an allowance corresponding to the increase in production cost from the tradable permit scheme using the best performing technique, and which cannot be passed on to customers. Any undertaking having a worse environmental performance benefits from a lower</p>

		allowance, proportionate to its environmental performance
	<p style="text-align: center;"><i>Justification</i></p> <p style="text-align: center;"><i>Those are minor amendments to clarify that it is not only about the use of the “best performing technique” in this sense performance may also be 0 emissions, but how that technique actually performs (environmental outcome result). The amendments are aligned to text used in the last sentence, referring to environmental performance.</i></p>	
4.5.4.2	<i>Proportionality</i>	
235	The extra investment costs consist of the difference between the aided investment costs and those of the investment under the counterfactual scenario as described in points 197 to 201. Where the project consists in the early adaptation to Union standards that are yet in force, the counterfactual scenario should in principle be that described in point 199.	The extra investment costs consist of the difference between the aided investment costs and those of the investment under the counterfactual scenario as described in points 197 to 201, and after subtraction of any relevant negative externalities pursuant to the method and criteria described in Annex III. Where the project consists in the early adaptation to Union standards that are yet in force, the counterfactual scenario should in principle be that described in point 199. Investment costs shall also subtract in addition the negative externalities if the same undertaking benefits of derogations to any Union Standards, in any Member State. In this case the counterfactual scenario is compliance with the strict BAT-AE(P)L.
237	The aid intensity may be increased by 10 percentage points for medium-sized enterprises or by 20 percentage points for small enterprises.	The aid intensity may be increased by 10 percentage points for medium-sized enterprises or by 20 percentage points for small enterprises that meet the following conditions:

		<p>Condition a: the following data is made publicly available online in user friendly electronic format on the EU Industrial Pollution Portal:</p> <ul style="list-style-type: none"> - Annual consumption data on resource use, including energy and water and inventory of chemicals used; - emissions release data, where pollutants are subject to continuous emissions monitoring, the raw data is made available through tele-reporting at least once every day; - Waste transfer data. <p>Condition b: the overall environmental performance of the installation is compatible with the achievement of relevant environmental quality standards.</p>
	<p><i>Justification</i></p> <p><i>It is not clear on what basis the size threshold alone justifies more aid, more transparency and performance efforts should be justified with more aid instead. Some basic transparency and EQS compatibility test requirements are added.</i></p>	
239	<p>The aid intensity may be increased by 10 percentage points for eco-innovation activities, provided that the conditions in point 213 are fulfilled.</p>	<p>The aid intensity may be increased by 10 percentage points for eco-innovation activities, provided that the conditions in point 213 are fulfilled and that fulfil the following conditions:</p> <p>Condition a: the following data is made publicly available online in user friendly electronic format on the EU Industrial Pollution Portal:</p> <ul style="list-style-type: none"> - Annual consumption data on resource use, including

		<p>energy and water and inventory of chemicals used</p> <ul style="list-style-type: none"> - emissions release data, where pollutants are subject to continuous emissions monitoring, the raw data is made available through tele-reporting at least once every day - Waste transfer data. <p>Condition b: the overall environmental performance of the installation is compatible with the achievement of relevant environmental quality standards.</p> <p>Condition c: the performance is 15 % better than strict BAT-AE(P)L levels set for new installations.</p> <p>Conditions a and b are cumulative. Condition c apply in addition to any installation falling under the scope of Directive 2010/75/EU.</p>
	<p><i>Justification</i></p> <p><i>The Eco innovation test is not sufficient. The sharing of the performance data so to provide an incentive effect to other actors should be required.</i></p> <p><i>Where installations are subject to EU BREFs (IED) the degree of eco-innovation shall be qualified as to desired improvement results.</i></p>	
240	By way of derogation from points 236 to 239, the Member State may also demonstrate, based on a funding gap analysis, as set out in points 47, 50 and 51, that a higher aid amount is required. In such a case, the Member State must conduct an ex post monitoring to verify the assumptions made about the level of aid required	DELETE

	and put in place a claw-back mechanism, as set out in point 53. The aid amount must not exceed the funding gap, as set out points 50 and 51.	
241	Where the aid is granted following a competitive bidding process conducted in accordance with the criteria in points 48 and 49, the aid amount is considered proportionate.	DELETE
	<p style="text-align: center;"><i>Justification</i></p> <p><i>We have reservations with solely requiring a competitive bidding procedure as set out in point 48 and 49 which is too focussed on price selection criteria. Negative externalities need to be discounted first (see Annex III). Environmental performance and social criteria are more appropriate than price selection criteria. Experience in other areas have also shown that bidding / tender approaches are not the most ideal way forward to promote uptake by many economic actors to deliver a desired solution (aided under the CEEAG): companies with a strong market position may undercut the competitors in the bidding by providing artificially lower bids, therefore harming competition. "Local economy preference" of equal service bidders should be considered. The most successful approach as to the uptake of renewable energy technologies has been the German feed-in-tariffs scheme, providing a premium for solar that was needed to get the market readiness of those options. The RES industry of Europe crashed after Member States took the bidding approach DG COMP seems to favour, because more "cost effective". It may very well be the most 'cost effective' approach but not the most effective to deliver a desired outcome especially if other negative externalities are not adequately priced</i></p>	

e. Aid for the remediation of contaminated sites, for the rehabilitation of natural habitats and ecosystems and for biodiversity and nature-based solutions

	Draft CEEAG	EEB text amendments
4.6 4.6.1	<i>Rationale for the aid</i>	<i>Rationale for the aid</i>

246	Financial support in the form of State aid can contribute substantially to the environmental objective of protecting and restoring biodiversity and ecosystems, in several ways, including by providing incentives to repair the damage to contaminated sites, rehabilitate degraded natural habitats and ecosystems or undertake investments for the protection of ecosystems.	Financial support in the form of State aid can contribute substantially to the environmental objective of protecting and restoring biodiversity and ecosystems, in several ways, including by providing incentives to repair the damage to contaminated sites, rehabilitate degraded natural habitats and ecosystems or undertake investments for the protection of ecosystems, in full coherence with the polluter pays principle and when it has not been possible to recover the costs from polluters, including the mother company and subsidiaries.
4.6.2	<i>Scope and activities supported</i>	
250	Aid under this Section may be granted for the following activities: (a) the remediation of environmental damage, including damage to the quality of the soil or of surface water or groundwater; (b) the rehabilitation of natural habitats and ecosystems from a degraded state; (c) investments contributing to the protection or restoration of biodiversity or of ecosystems where those investments contribute to achieving the good condition of ecosystems or to protecting ecosystems that are already in good condition; (d) investments in nature-based solutions for climate change adaptation.	Aid under this Section may be granted for the following activities: (a) the remediation of environmental damage, including damage to the quality of the soil or of surface water or groundwater, in full coherence with the polluter pays principle; (b) the rehabilitation of natural habitats and ecosystems from a degraded state, in full coherence with the polluters pay principle; (c) investments contributing to the protection or restoration of biodiversity or of ecosystems where those investments contribute to achieving the good condition of ecosystems or to protecting ecosystems that are already in good condition, provided that the investments go beyond EU standards and will not solely

		allow the enforcement of EU legislation; (d) investments in nature-based solutions for climate change adaptation.
4.6.3	<i>Incentive effect</i>	<i>Incentive effect</i>
253	Without prejudice to the 'polluter pays' principle, aid to the entity liable under the applicable Union or national law may have an incentive effect where it covers the extra costs necessary to increase the scope or ambition of the decontamination or rehabilitation project beyond the legal obligations under the applicable Union or national law. The Member State must demonstrate that all reasonable efforts have been taken to identify the liable operator. Where the person liable under the applicable law is not identified or cannot be made to bear the costs, State aid for the entire decontamination or rehabilitation works may be regarded as having an incentive effect. Where the person having caused the contamination or other environmental damage is identified, the Member State must demonstrate that all legal steps have been taken to make the polluter bear the costs, including legal actions. The Commission may consider that an undertaking cannot be made to bear the costs of remediating the contamination	Without prejudice to the polluter pays principle, aid to the entity liable under the applicable Union or national law may have an incentive effect where it covers the extra costs necessary to increase the scope or ambition of the decontamination or rehabilitation project beyond the legal obligations under the applicable Union or national law. The Member State must demonstrate that all reasonable efforts have been taken to identify the liable operator. Where the person liable under the applicable law is not identified or cannot be made to bear the costs, State aid for the entire decontamination or rehabilitation works may be regarded as having an incentive effect. Where the person or the undertaking having caused the contamination or other environmental damage is are identified, the Member State must demonstrate that all legal remedies have been exhausted to make the polluter bear the costs, including legal actions and that no "planned bankruptcy¹⁵" scheme has been put in practice to avoid the payment of environmental

¹⁵ There is not only the risk that a corporation may accidentally cause environmental harm of a magnitude beyond its assets and thus face insolvency; in fact, there is even a risk that the corporate form is (ab)used to put hazardous activities into separate legal entities as a result of which the firm in fact organises its own insolvency.

	<p>it has caused where it ceased to legally exist and no other undertaking can be regarded as its legal successor¹⁰⁵, and where there is no or insufficient financial security to meet the costs of remediation.</p>	<p>remediation. The Commission may consider that an undertaking cannot be made to bear the costs of remediating the contamination it has caused where it ceased to legally exist and no other undertaking can be regarded as its legal successor, and where there is no or insufficient financial security to meet the costs of remediation.</p> <p>Whenever the undertaking has ceased to exist, the Commission will open a consultation aimed at ensuring that no "planned bankruptcy" scheme has been put in practice aimed to avoid the payment of environmental remediation.</p>
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f. Aid for district heating or cooling

	Draft CEEAG	EEB text amendments
342	Such aid measures typically cover the construction or upgrade of the generation unit to use renewable energy, waste heat, or highly-efficient cogeneration including thermal storage solutions, or the upgrade of the distribution network to reduce losses and increase efficiency, including through smart and digital solutions.	<p>Such aid measures typically cover the construction or upgrade of the generation unit to use renewable energy, waste heat, or highly-efficient cogeneration including thermal storage solutions, or the upgrade of the distribution network to reduce losses and increase efficiency, including through smart and digital solutions.</p> <p>In any case, aid measures are not intended to cover the construction of new waste-to-energy installations.</p>
4.10.3	<i>Necessity and appropriateness</i>	

344	Sections 3.2.1.1. and 3.2.1.2. do not apply to aid to district heating or cooling. The Commission considers that State aid can contribute to addressing market failures by triggering the investment needed for the creation of energy efficient district heating and cooling systems. 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	Sections 3.2.1.1. and 3.2.1.2. do not apply to aid to district heating or cooling. The Commission considers that State aid can contribute to addressing market failures by triggering the investment needed for the creation of energy efficient district heating and cooling systems. 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 and that they do not extend the lifespan of facilities.
4.10.5	<i>Avoidance of undue negative effects on competition and trade and balancing</i>	
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	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.	low carbon gas or to close the plant on a timeline consistent with the Union's climate targets. In any case, to avoid lock-ins, natural gas fired installations shall be phased out by 31 December 2034 at the latest.
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g. Aid for coal, peat and oil shale closure

	Draft CEEAG	EEB text amendments
367	The Sections 4.12.1 and 4.12.2 provide the compatibility rules applicable to two types of measures that Member States may take to support the closure of power plants that burn coal (including both hard coal and lignite), peat or oil shale and potentially also of mining operations for these fuels (together referred to as "coal, peat and oil shale activities").	The Sections 4.12.1 and 4.12.2 provide the compatibility rules applicable to two types of measures that Member States may take to support the closure of power plants that burn coal (including both hard coal and lignite) by latest 31 December 2026, plants that burn peat or oil shale by latest 31 December 2029 , and cessation potentially also of mining operations for these fuels (together referred to as "coal, peat and oil shale activities") by latest 31 December 2029 .
368	The two Sections below set out the criteria, which the Commission will apply when assessing the incentive effect, necessity, appropriateness, proportionality and effects on competition and trade. The compatibility criteria in Chapter 3 apply only for those criteria for which there are no specific rules in the two Sections below.	The two Sections below set out the criteria, which the Commission will apply when assessing the incentive effect, necessity, appropriateness, proportionality and effects on pollution prevention at source, the polluter pays principle , competition and trade, taking also into account the European Green Deal objectives, notably the Zero Pollution Ambition action plan, in alignment to the Paris Agreement . The compatibility criteria in Chapter 3 apply only for those criteria for which there are no specific rules in the two Sections below.

4.12.1 4.12.1.1	<i>Aid for early closure</i> <i>Rationale</i>	<i>Aid for early closure</i> <i>Rationale</i>
369	<p>The shift away from power generation based on coal, peat and oil shale is one of the most important drivers of decarbonisation in the power sector in the Union. This shift is largely driven by market forces such as the effects of carbon prices and competition from renewables with low marginal costs.</p>	<p>The shift away from power generation based on coal, peat and oil shale is one of the most important pre-requisite of decarbonisation in the power sector in the Union, which fits to the wider zero pollution ambition goals notably by shifting away from combustion type of processes for energy generation. This shift is largely driven by market forces such as the effects of carbon prices or internalization of other pollution costs and higher uptake of renewables with low marginal costs. The market driven shift can be accelerated through command-and-control type of approaches affecting the operation of those activities, such as pollution permits set under relevant Union standards or other requirements set for complying with the EU acquis.</p>
369(a)		<p>NEW For the scope of these Guidelines, all potential drivers for achieving decarbonisation and the zero-pollution ambition within the power sector of the Union shall be taken into account for the evaluation of choice of measures considered, whereas state aid type of measures (monetary compensations) shall be considered as the very last resort.</p> <p>The Member State proposing the measure shall demonstrate that the following type of drivers have been considered as an alternative approach to monetary compensations to the beneficiary or are otherwise applied in the evaluation of the conditional tests</p>

		<p>set forth under these guidelines and shall include the following:</p> <p>a) the adoption of national carbon price floors or other measures achieving a carbon price of at least 120 €/t CO₂eq;</p> <p>b) negative externalities, including the cost of air, soil and water pollution are subtracted from the aid scheme;</p> <p>c) the beneficiary does not benefit from direct subsidies, including in the form of tax exemptions or tax reductions;</p> <p>d) the conditionality of full compliance with Union Standards and relevant Environmental Quality Standards is enforced.</p> <p>The method and criteria to be used are further specified in Annex III.</p>
370	<p>However, Member States may decide to accelerate this market driven transition by prohibiting the generation of power based on these fuels as of a certain date. This prohibition can create situations in which profitable coal, peat and oil shale activities have to close before the end of their economic lifetime and can hence result in foregone profit.</p>	<p>However, Member States may decide to accelerate this market driven transition by prohibiting the generation of power based on these fuels by 31 December 2026 as of a certain date. This prohibition may can create situations in which profitable (defined according to point 369 (a)) coal, peat and oil shale activities have to close before the end of their economic lifetime and may can hence result in foregone profit.</p> <p>In any case, aid shall not be granted to operators of plants whose closure has been decided before the adoption of these Guidelines.</p>
4.12.1.2	<i>Scope and supported activities</i>	<i>Scope and supported activities</i>

371	This Section sets out compatibility rules for measures taken to compensate for the early closure of profitable coal, peat and oil shale activities.	This Section sets out compatibility rules for measures taken to compensate for the early closure of profitable coal, peat and oil shale activities by 31 December 2029, provided that that combustion of coal and lignite from those activities ceases by latest 31 December 2026.
372	Measures covered by this Section can facilitate the development of certain economic activities or areas. For instance, such measures can create space for the development of other, likely environmentally friendly, activities in order to offset the reduction in the power generation capacity caused by the early closure. In the absence of the measure, this development may not take place to the same extent. In addition, the predictability and legal certainty introduced by such measures can help to facilitate the ordered closure of coal, peat and oil shale activities.	Measures covered by this Section can facilitate the development of certain economic activities or areas. For instance, such measures can create space for the development of other, likely -environmentally friendly, activities, as per art. 8 and 9 of Regulation (XXXX) establishing the Just Transition Fund , to offset the reduction in the power generation capacity caused by the early closure. In the absence of the measure, this development may not take place to the same extent. In addition, the predictability and legal certainty introduced by such measures can help to facilitate the ordered closure of coal, peat and oil shale activities.
4.12.1.3	<i>Incentive effect</i>	<i>Incentive effect</i>

373	<p>The measure needs to trigger a change in the economic behaviour of the operators, which close down their coal, peat and oil shale activities earlier than the end of their economic lifetime. To determine whether this is the case, the Commission will compare the effects of the measure with a counterfactual scenario without the mandatory closure and related compensation. The counterfactual scenario should be based on justified assumptions in line with projected developments and reflect the projected revenues and costs of the installations in question. 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. In exceptional circumstances the Member State may justify why a longer period is necessary even without a correction mechanism. The measure should not lead to a circumvention of the rules applicable to measures for security of supply.</p>	<p>The measure needs to trigger a change in the economic behaviour of the operators, which close down their coal, peat and oil shale activities earlier than the end of their economic lifetime by 31 December 2029 and 31 December 2026 in the case of lignite and coal. To determine whether this is the case the closure would deprive operators of profits, the Commission will compare the effects of the measure with a counterfactual scenario without the mandatory closure and related compensation. The counterfactual scenario should be based on transparent methodologies and data sets, justified assumptions in line with projected developments and reflect the projected revenues and costs of the installations in question, as per art. 369 (a). The closure of the coal, peat and oil shale activities should occur no later than one year from the award of the compensation and, in any case, no later than 31 December 2029 for peat and oil and three years earlier for coal and lignite combustion. unless a correction mechanism is in place to update the calculation based on the most recent assumptions. In exceptional circumstances the Member State may justify why a longer period is necessary even without a correction mechanism. The measure should not lead to a circumvention of the rules applicable to measures for security of supply, nor to conversions to technologies whose energy efficiency is less than 65%.</p>
4.12.1.4	<i>Necessity and appropriateness</i>	<i>Necessity and appropriateness</i>

374	<p>Compensation for such foregone profit resulting from the early closure of profitable coal, peat and oil shale activities often helps to avoid legal disputes with the operators and ensures legal certainty and predictability. Compensation for lost profits decided by a national court in line with rules of domestic law applicable to any litigant in a similar situation is likely, because of its nature, to fall outside the scope of State aid control. The same rule does not apply for compensation decided on by the Member State authorities or agreed with the undertakings. In such cases, the Commission cannot exclude that these forms of compensation involve State aid, as the Commission cannot verify whether the compensation granted is equal to the compensation that would have been awarded under national law.</p>	<p>Compensation for such foregone profit resulting from the early closure of profitable coal / lignite by 31 December 2026 and peat and oil shale activities by 31 December 2029 often helps to avoid legal disputes with the operators and ensures legal certainty and predictability whilst reducing future compliance costs for Member States in regards to environmental quality standards, such as the achievement of the 2027 good ecological and chemical status for surface waters set under the Water Framework Directive. Compensation for lost profits decided by a national court in line with rules of domestic law applicable to any litigant in a similar situation is likely, because of its nature, to fall outside the scope of State aid control. The same rule does not apply for compensation decided on by the Member State authorities or agreed with the undertakings. In such cases, the Commission cannot exclude that these forms of compensation involve State aid, as the Commission cannot verify whether the compensation granted is equal to the compensation that would have been awarded under national law.</p>
4.12.1.5	<i>Proportionality</i>	<i>Proportionality</i>
375	<p>The aid must in principle be granted through a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, in line with Section 3.2.1.3. This requirement does not apply where the Member State demonstrates that a bidding process is unlikely to be competitive for objective reasons. This can, for</p>	<p>The aid must in principle be granted through a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, in line with Section 3.2.1.3. This requirement does not apply where the Member State demonstrates that a bidding process is unlikely to be competitive for objective reasons. This can, for example, be the case where the number of potential</p>

	<p>example, be the case where the number of potential participants is limited, provided this is not due to discriminatory eligibility criteria.</p>	<p>participants is limited, provided this is not due to discriminatory eligibility criteria.</p> <p>The bidding process shall award earlier closures through a regressive mechanism where higher aid is awarded to the earliest closures and proportionate to pollution prevention and reduction efforts e.g. through forced peak or emergency only operation. In any case, no aid shall be agreed to closures happening after 31 December 2026 for activities involving coal/lignite combustion and after 31 December 2029 for peat and oil or agreed before the entering into force of these Guidelines.</p>
376	<p>If the aid is granted through a competitive bidding process, the Commission will presume that the aid is proportionate and limited to the minimum necessary.</p>	<p>If the aid is granted through a competitive bidding process incorporating the negative externalities set out in Annex III and a regressive mechanism, the Commission will presume that the aid is proportionate and limited to the minimum necessary.</p>

377	<p>In the absence of a competitive bidding process, the Commission will assess proportionality on a case-by-case basis. In this context, the Commission will analyse in detail the assumptions used by the Member State to determine the foregone profits and additional costs due to early closure, by comparing the expected profitability in the factual and counterfactual scenarios. Additional costs cannot include costs that would also have occurred in the counterfactual scenario, such as dismantling costs. Where the closure of the coal, peat and oil shale activities occurs more than one year after the compensation has been awarded, the Member State must introduce a mechanism to update the calculation based on the most recent assumptions, unless it can demonstrate why the use of such a mechanism is not justified due to exceptional circumstances in the case at hand.</p>	<p>In the absence of a competitive bidding process, the Commission will assess proportionality on a case-by-case basis and taking into account the criteria set out in Annex III to these guidelines. In this context, the Commission will analyse in detail the assumptions used by the Member State to determine the foregone profits and additional costs due to early closure, by comparing the expected profitability in the factual and counterfactual scenarios. Additional costs cannot include costs that would also have occurred in the counterfactual scenario, such as dismantling and environmental remediation costs. Where the closure of the coal, peat and oil shale activities occurs more than one year after the compensation has been awarded, the Member State must introduce a mechanism to update the calculation based on the most recent assumptions, unless it can demonstrate why the use of such a mechanism is not justified due to exceptional circumstances in the case at hand. In these cases, the Commission will open a public consultation to allow the interested parties to submit analysis of the case.</p>
4.12.1.6	<i>Avoidance of undue negative effects on competition and trade</i>	<i>Avoidance of undue negative effects on the pollution prevention at source and pays principle and competition and trade</i>
	<p><i>Justification</i></p> <p><i>This amendment reflects the position taken as to a need of change of approach in regard to EU state aid decisions, required under the EU Green Deal context (see comments in introduction)</i></p>	

378	<p>The Member State must identify and quantify the expected environmental benefits of the measure, where possible in terms of subsidy per tonne of CO2 equivalent emissions avoided. When assessing the benefits of the measure in terms of decarbonisation, the Commission will also take into account whether the measure includes a voluntary cancellation of CO2 emission allowances at national level.</p>	<p>The Member State must identify and quantify the expected environmental benefits of the measure, where possible in terms of subsidy per tonne of CO2 equivalent and other air pollutants emissions avoided. It shall also quantify other environmental benefits, including improved water quality and availability, soil quality and resource impacts, as well as qualitative improvements of closures towards the timely achievement of relevant environmental quality standards (notably air, and water). For the purpose of the cost benefit evaluation, the criteria set out in Annex III applies.</p> <p>When assessing the benefits of the measure in terms of decarbonisation, the Commission will also take into account whether the measure includes shall require the a voluntary cancellation of CO2 emission allowances at national level.</p> <p>To ensure the best value for public money and in the spirit of the “energy efficiency first” principle, aid shall be excluded for Large Combustion Plants (LCP) involving combustion with an energy efficiency less than 65%.</p>
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379	It is important to ensure that the measure is structured in a way that limits to the minimum any distortion of competition in the market. If the aid is granted through a competitive bidding process open to all operators of coal, peat or oil shale on a non-discriminatory basis, the Commission will presume that the aid has limited distortive effects on competition and trade. In the absence of a competitive bidding process, the Commission will assess the aid's effects on competition and trade based on the design of the measure and its effect on the relevant market.	It is important to ensure that the measure is structured in a way that limits to the minimum any distortion of competition in the market. If the aid is granted through a competitive bidding process open to all operators of coal, peat or oil shale on a non-discriminatory basis, and a regressive mechanism where the higher aid is awarded to the earliest closures and highest common interest benefits in terms of prevented pollution , the Commission will presume that the aid has limited distortive effects on competition and trade. In the absence of a competitive bidding process, the Commission will assess and open a public consultation on the aid's effects on competition and trade based on the design of the measure and its effect on the relevant market
4.12.2	<i>Aid for exceptional costs</i>	<i>Aid for exceptional costs</i>
4.12.2.1	<i>Rationale for the aid</i>	<i>Rationale for the aid</i>
380	The closure of uncompetitive coal, peat and oil shale activities can generate significant social and environmental costs at the level of the power plants and the mining operations. Member States may decide to cover such exceptional costs to mitigate the social and regional consequences of the closure process.	The closure of uncompetitive coal, peat and oil shale activities can generate significant social and environmental costs at the level of the power plants and the mining operations. On the other hand, early closures allow operators to save economic resources in terms of avoided environmental damage, which leads to lower remediation costs. Member States may decide to cover such exceptional costs to mitigate the social and regional consequences of the closure process.

380 (a)		<p>NEW The exceptionality of costs to mitigate social consequences shall be assessed against the availability of dedicated funds for supporting coal regions in transition, such as the Just Transition Fund.</p> <p>Consequently, the provision of State aid for exceptional costs shall be agreed only after the depletion of those funds to mitigate the social consequences of coal, peat and oil phase out.</p>
4.12.2.2	<i>Scope and supported activities</i>	<i>Scope and supported activities</i>
4.12.2.3	<i>Necessity and appropriateness</i>	<i>Necessity and appropriateness</i>
384	The Commission will consider aid to cover exceptional costs necessary and appropriate to the extent it can help mitigate the social and environmental impact of the closure of uncompetitive coal, peat and oil shale activities in the region and the Member State concerned.	The Commission will consider aid to cover exceptional costs necessary and appropriate to the extent it can help mitigate the social and environmental impact of the closure of uncompetitive coal, peat and oil shale activities in the region and the Member State concerned, and only after the depletion of other EU and national funds dedicated to coal regions in transition, such as the Just Transition Fund.
4.12.2.4	<i>Incentive effect and proportionality</i>	<i>Incentive effect and proportionality</i>
386	The categories of eligible costs covered are defined in Annex II. Costs resulting from non-compliance with environmental regulations and costs related to current production are not eligible.	The categories of eligible costs covered are defined in Annex II. Costs resulting from non-compliance with environmental regulations, costs that would have resulted also after the expected end of the activity and costs related to current production are not eligible.

387	<p>In particular with regard to aid to cover exceptional environmental costs, such aid may be granted only when the polluter is not identified or cannot be held legally liable for covering such costs in accordance with the “polluter pays” principle. The polluter is the entity liable under the law applicable in each Member State, without prejudice to Directive 2004/35/EU of the European Parliament and of the Council, or other relevant Union rules.</p>	<p>In particular with regard to aid to cover exceptional environmental costs, such aid may be granted only when the polluter is not identified or cannot be held legally liable for covering such costs in accordance with the “polluter pays” principle. The polluter is the entity liable under the law applicable in each Member State, without prejudice to Directive 2004/35/EU of the European Parliament and of the Council, or other relevant Union rules.</p> <p>Whenever the polluter is not identified or cannot be held legally liable for covering environmental costs, the Commission will open a consultation aimed at ensuring that any “planned bankruptcy” scheme has been put in practice to avoid the payment of environmental and social costs.</p>
388	<p>Without prejudice to the ‘polluter pays’ principle, State aid may be granted to the entity liable under the applicable Union and national rules only to cover exceptional environmental costs going beyond the legal obligations under the applicable Union and national rules or under previous/contractual commitments.</p>	<p>Without prejudice to the ‘polluter pays’ principle, State aid may be granted to the entity liable under the applicable Union and national rules only to cover exceptional environmental costs going beyond the legal obligations under the applicable Union and national rules or under previous/contractual commitments.</p> <p>Exceptional costs will be considered eligible only when:</p> <ul style="list-style-type: none"> - The Member State has enforced the strictest requirements set under relevant ‘Union Standards’ - The operator has put in place robust financial liability schemes before these Guidelines are adopted.

389	<p>Where the person liable under the applicable law is not identified or cannot be made to bear the costs, State aid may be granted to cover all the exceptional environmental costs. The Member State must demonstrate that all reasonable efforts have been taken to identify the liable entity. Where the person having caused the contamination or other environmental damage is identified, the Member State must demonstrate that all legal steps have been taken to make the polluter bear the costs, including legal actions. The Commission may consider that an undertaking cannot be made to bear the costs of remediating the contamination it has caused where it has ceased to legally exist and no other undertaking can be regarded as its legal successor and/or there is no or insufficient financial security to meet the costs of remediation.</p>	<p>Where the person liable under the applicable law is not identified or cannot be made to bear the costs, State aid may be granted to cover all the exceptional environmental costs. The Member State must demonstrate that all reasonable efforts have been taken to identify the liable entity and that no “planned bankruptcy” scheme has been put in practice to avoid the payment of remediation costs. Where the person or the undertaking having caused the contamination or other environmental damage is identified, the Member State must demonstrate that all legal steps have been taken to make the polluter bear the costs, including legal actions. The Commission may consider that an undertaking cannot be made to bear the costs of remediating the contamination it has caused where it has ceased to legally exist and no other undertaking can be regarded as its legal successor and/or there is no or insufficient financial security to meet the costs of remediation.</p>
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390	The aid amount must be limited to the coverage of exceptional costs of the beneficiary and must not exceed the costs actually incurred. The Commission will require Member States to clearly and separately identify the aid amount for each category of eligible costs, as detailed in Annex II. Where the Member State covers such costs on the basis of estimations, before they are actually incurred by the beneficiary, it must carry out an <i>ex post</i> verification of the costs incurred on the basis of detailed statements provided by the beneficiary to the granting authority, including invoices or certificates showing the exceptional costs incurred, and adjust the amounts granted accordingly.	The aid amount must be limited to the coverage of exceptional costs of the beneficiary and must not exceed the costs actually incurred, neither cover expenses for which the operator shall be made liable according to the polluter pays principle. The Commission will require Member States to clearly and separately identify the aid amount for each category of eligible costs, as detailed in Annex II. Where the Member State covers such costs on the basis of estimations, before they are actually incurred by the beneficiary, it must carry out an <i>ex post</i> verification of the costs incurred on the basis of detailed statements provided by the beneficiary to the granting authority, including invoices or certificates showing the exceptional costs incurred, and adjust the amounts granted accordingly.
4.12.2.5	<i>Avoidance of undue negative effects on competition and trade</i>	<i>Avoidance of undue negative effects on competition and trade</i>
391	Provided the aid is limited to the coverage of exceptional costs incurred by the beneficiary, the Commission considers that it has limited distortive effects on competition and trade.	Provided the aid is limited to the coverage of exceptional costs incurred by the beneficiary and that is not used to cover costs that would have been incurred in any case after the end of the activity, the Commission considers that it has limited distortive effects on competition and trade.
	<p>ANNEX 2 Definition of costs referred in Section 4.12.2</p> <p>1. Costs by undertakings which have closed or are closing coal, peat and oil shale activities</p> <p>The following cost categories exclusively, and only if they result</p>	<p>ANNEX 2 Definition of costs referred in Section 4.12.2</p> <p>1. Costs by undertakings which have closed or are closing coal, peat and oil shale activities</p> <p>The following cost categories exclusively, and only if they result from</p>

	<p>from the closure of coal, peat and oil shale activities:</p> <p>(a) the cost of paying social welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age;</p> <p>(b) other exceptional expenditure on workers who have lost or who lose their jobs;</p> <p>(c) the payment of pensions and allowances outside the statutory system to workers who have lost or who lose their jobs and to workers entitled to such payments before the closure;</p> <p>(d) the cost covered by the undertakings for the re-adaptation of workers in order to help them find new jobs outside the coal, peat and oil shale industry, especially training costs;</p> <p>(e) the supply of free coal, peat and oil shale to workers who have lost or who lose their jobs and to workers entitled to such supply before the closure, or the monetary equivalent;</p> <p>(f) residual costs resulting from administrative, legal or tax provisions which are specific to the coal, peat and oil shale industry;</p> <p>(g) additional underground safety work resulting from the closure of coal, peat and oil shale activities;</p> <p>(h) mining damage, provided that it has been caused by the coal, peat and oil shale activities which have been closed or which are being closed;</p> <p>(i) all duly justified costs related to the rehabilitation of former power plants and mining operations, including:</p>	<p>the closure of coal, peat and oil shale activities:</p> <p>(a) the cost of paying social welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age;</p> <p>(b) other exceptional expenditure on workers who have lost or who lose their jobs;</p> <p>(c) the payment of pensions and allowances outside the statutory system to workers who have lost or who lose their jobs and to workers entitled to such payments before the closure;</p> <p>(d) the cost covered by the undertakings for the re-adaptation of workers in order to help them find new jobs outside the coal, peat and oil shale industry, especially training costs;</p> <p>(e) the monetary equivalent of the supply of free coal, peat and oil shale to workers who have lost or who lose their jobs and to workers entitled to such supply before the closure, or the monetary equivalent;</p> <p>(f) residual costs resulting from administrative, legal or tax provisions which are specific to the coal, peat and oil shale industry;</p> <p>(g) additional underground safety work resulting from the closure of coal, peat and oil shale activities;</p> <p>(h) mining damage, provided that it has been caused by the coal, peat and oil shale activities which have been closed or which are being closed;</p> <p>(i) all duly justified costs related to the rehabilitation of former power plants and mining operations, including:</p>
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	<p>residual costs resulting from contributions to bodies responsible for water supplies and for the removal of waste water, other residual costs resulting from water supplies and the removal of waste water;</p> <p>(j) residual costs to cover former workers' health insurance;</p> <p>(k) costs related to the cancelling or modification of ongoing contracts (for a maximum value of 6 months of production);</p> <p>(l) exceptional intrinsic depreciation provided that it results from the closure of coal, peat and oil shale activities;</p> <p>(m) costs of surface recultivation.</p> <p>The increase in the value of the land must be deducted from the eligible costs for the cost categories referred to in points (g), (h), (i) and (m). 4</p> <p>2. Costs made by several undertakings</p> <p>The following cost categories exclusively:</p> <p>(a) increase in contributions, outside the statutory system, to cover social security costs as a result of the drop, following closure of coal, peat and oil shale activities, in the number of contributors;</p> <p>(b) expenditure, resulting from the closure of coal, peat and oil shale activities, on the supply of water and the removal of waste water;</p> <p>(c) increase in contributions to bodies responsible for supplying water and</p>	<p>residual costs resulting from contributions to bodies responsible for water supplies and for the removal of waste water, other residual costs resulting from water supplies and the removal of waste water;</p> <p>(j) residual costs to cover former workers' health insurance;</p> <p>(k) costs related to the cancelling or modification of ongoing contracts (for a maximum value of 6 months of production);</p> <p>(l) exceptional intrinsic depreciation provided that it results from the closure of coal, peat and oil shale activities;</p> <p>(m) costs of surface recultivation.</p> <p>The increase in the value of the land must be deducted from the eligible costs for the cost categories referred to in points (g), (h), (i) and (m). 4</p> <p>2. Costs made by several undertakings</p> <p>The following cost categories exclusively:</p> <p>(a) increase in contributions, outside the statutory system, to cover social security costs as a result of the drop, following closure of coal, peat and oil shale activities, in the number of contributors;</p> <p>(b) expenditure, resulting from the closure of coal, peat and oil shale activities, on the supply of water and the removal of waste water;</p> <p>(c) increase in contributions to bodies responsible for supplying water and removing waste water, provided that</p>
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	removing waste water, provided that this increase is the result of a reduction, following the closure of coal, peat and oil shale activities, in the production subject to levy.	this increase is the result of a reduction, following the closure of coal, peat and oil shale activities, in the production subject to levy.
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Notes to the amendments related to aid for coal, peat and oil shale closure and Annex 2:

By definition, competition is about reading the market and moving towards more profitable alternatives. In several sectors, late movers do not have the privilege of being bailed out by State aids when their business decisions are wrong. In this respect, the energy sector should not be different: **coal economics have been under pressure for years and, already in 2019, they become totally unviable¹⁶.**

Moreover, the EU decided to put a price on carbon emissions already in 2003. After a long period of uncertainties, that decision is paying off today, since the carbon price is finally growing at levels that the majority of stakeholders, including the regulator, hoped for when the ETS was established.

Despite that and other signals provided by regulators and the market itself, many coal operators deliberately decided to not restructure their activities towards clean sources and continued to burn coal until today. Other long-sighted operators, instead, embraced the transition and, today, are profiting from their wise decisions and their companies are thriving.

Today, it would not be fair to bail out those operators that ignored the market signals; it would be even contrary to the good functioning of the internal market. For this reason, we believe that any provision of State aids for the closure of coal operations should be strictly restricted to the following set of conditions:

- a. Closures for coal and lignite combustion activities shall occur by 31 December 2027, because the Water Framework Directive requires a full phase out of mercury emissions by that date as the achievement of the

¹⁶ <https://ember-climate.org/project/coal-collapse/>

good chemical and ecological status of surface water (currently exceeded in many water bodies). The main anthropogenic source of mercury emissions in Europe is coal combustion, the only way to achieve the phase out objective is end of combustion of those fuels. We regard that deadline also compatible with the Paris Agreement. A later 2030 phase out date for the other fuels (peat and oil) may be considered.

- b. Before granting the aid, the Commission should check that there are no other regulatory ways to achieve the same target and that Member States have enforced all the EU standards concerning pollution prevention measures (BAT Conclusion in the framework of the IED)
- c. To speed up the phase out process, the Commission should apply a regressive mechanism where the earlier closure and higher pollution reduction efforts (e.g. forced peak or emergency only operation) would benefit a proportionally higher amount of aid.
- d. Even though the Commission is assuming that there might still be some profitable coal activity in Europe, we think that it is hardly the case. Not only coal operations have been economically unviable since 2019 but also the price of CO₂ emissions skyrocketed in the past 6 months, making them even more unprofitable. Moreover, the new EU climate legislation will put even more pressure on coal economics. We strongly advocate for including the whole social cost of coal operations when calculating the profitability of coal, which means that negative externalities, a fair carbon price of at least 120 €/t¹⁷ and direct and hidden subsidies shall be included into the equation (see Annex III).
- e. To ensure the best value for money and to enforce the “energy efficiency first” principle, new energy generation projects involving combustion with an energy efficiency < 65% shall be excluded. The energy efficiency level for Combined Cycle Gas Turbines is 62.5% (265g CO₂/kWh), even though the average actual performance levels reach 45% (400g CO₂/kWh). Further we consider that those energy generation projects based on combustion must achieve a GHG performance standard not exceeding 100g CO₂eq / kWh by latest 2035. Considering that this would trigger important costs due to the CCS obligations we regard this investment as a waste of public money for projects that would lock Member States to fossil gas for decades to come and that in any case, to respect the EU decarbonisation targets, would need to be dismantled by 2035. Hence the Guidelines should require the operator to bear for those compliance costs in the baseline scenario.

¹⁷ <https://www.oecd.org/tax/tax-policy/effective-carbon-rates-2021-highlights-brochure.pdf>

- f. Concerning remediation issues, the polluter pays principle shall be fully enforced. Aid shall not cover costs that the operator would have incurred in any case after the natural end of its activities. For instance, under no circumstances shall State aids go to cover post-mining perpetual obligations, such as water management, recultivation and renaturation of the mining areas, etc.
- g. Exceptional environmental costs going beyond legal obligations might be covered by State aids only if the operator has put in place the necessary financial liability instruments able to cover remediation issues and the Member State has enforced the most advanced pollution control measures (BAT)¹⁸ adopted under the Industrial Emissions Directive that, by definition, have been considered economically viable by the industry through the Sevilla process¹⁹.
- h. The Commission should pay attention to "planned bankruptcy" schemes, which might be put in place to prevent private companies to cover remediation works, as well as to the creation of "bad companies" owned by the State with the purpose to shift to the public purse the obligations connected to mine remediation.

Lastly, workers should not carry the burden of short-sighted business decisions by the management. For this reason, State aid can be agreed for alleviating social problems, provided that Member States have already used the EU funds specifically allocated for easing the energy transition, such as the Just Transition Mechanism.

6. NEW Annex III

Method and criteria for internalisation of external costs and common screening conditions for establishing 'incentive effect', 'proportionality' and 'appropriateness' of aid

The Member State or beneficiary requesting aid schemes needs to provide the following evidence as part of the state aid application pursuant to the CEEAG framework. The European Commission will screen any state aid application under both of those conditionality tests.

¹⁸ <https://www.eea.europa.eu/policy-documents/best-available-techniques-bat-conclusions>

¹⁹ <http://www.eipie.eu/the-sevilla-process>

Minimal level of required “incentive effect” to be demonstrated by the aid scheme:

1. the aid will contribute substantially to the achievement of the environmental objectives in the meaning of Article 3(a) of Regulation 2020(852); and
2. the aid will achieve GHG emission reduction that is at least to the level provided under the Innovation Fund and relevant technical screening criteria developed under this scheme in accordance to Commission Delegated Regulation 2019/856;
3. the polluter potentially benefiting from the aid must demonstrate that aid was requested under the scheme referred to point 2 and /or the financial aid resources under that scheme have been exhausted.

Criteria 1 and 2 are cumulative.

Where criteria 3 is not met due to absence technical screening criteria or non-application of the beneficiary through those aid schemes, the Commission must assess the aid applied under the CEEAG whether it is compatible to the objectives set out under both precited frameworks and consider the state aid scheme proposal as a “support project” for the purpose of its assessment.

Minimum criteria to be applied to consider the aid scheme as “proportional” and “appropriate”.

4. Without prejudice to further criteria and conditions established in the applicable sections pursuant to the CEEAG, the following minimal conditions apply and need to be complied with:

The aid must internalise all negative externalities from the concerned activity subject to the aid and those are subtracted. Negative externalities exist when pollution or negative environmental health impact is not adequately priced and the polluter does not pay in full the real cost to the economy. The beneficiary of aid must therefore provide evidence that the following internalisation of negative externalities is occurring prior to relying on state aid schemes. The beneficiary must demonstrate the following internalisation of external costs:

- a. **GHG damage costs** due to continued operation of economic activities, where the price levels are set to below 105€/tonne of GHG emitted up to 2025, 199€ for economic activities in operation as from 2030 and expected climate change avoidance costs will be set at 283€/tCO₂eq (central) and 524€/tCO₂eq (high estimate) for the 2040 to 2060 term.
- b. **Air pollution damage costs**, where the Value of Statistical Life (VSL) values adapted to the recommended OECD price levels and adapted to inflation must be applied, unless a national taxation system is in place that recovers the equivalent costs;
- c. **Water pollution costs and other water service costs**: This shall notably cover indirect costs of water supply such as compliance with relevant drinking water standards affected by the continuation of the activity in question. In relation to water abstraction for industrial use such as cooling, mine drainage, air pollution abatement controls, the minimal fee to be applied shall be € 0,11/m³ of water abstracted, unless a higher fee is applied for the same water body by another Member State, in that case the higher fee applies for the purpose of the calculation. The fee shall reflect the external damage cost paid by its use and should in no way be less than competing energy providers like hydropower. Where the origin of the water source / body is the same, the fee shall be at least the same level than applied in another country for a user of that same water source / body;
- d. **Damage costs to habitats, soil fertility and crop fertility in the surrounding of the site**;
- e. **Other remediation costs and liabilities** due to operation of the activity that are of global nature such as sedimentation of mercury to EU surface waters; achievement and liability costs to Member States with Environmental Quality Standards.

Where criterion (b) is applied, criterion (a) may be considered as optional.

- 5. The aid must provide “best value in the common interest for money’ in terms of alternative use of that same sum of aid to deliver a similar level of objectives desired by the proposed aid, taking account all the criteria set out under this Annex.

The following common assessment principles apply:

- a. pollution prevention solutions are preferred over control / reduction measures;
- b. the Member State / beneficiary can provide evidence that the consideration of alternative approaches to state aid such as pollution standards, emission limit values, national legislation, levies, charges or taxation systems have been exhausted and that those alternative measures are not as effective in achieving the desired environmental outcome;
- c. Where the aid concerns energy generation that assessment must also consider the following elements:
 - the possibility to substitute the equivalent energy supply of the displaced asset through imports of the displaced energy from other countries;
 - the effect of allocation of the proposed aid to other beneficiaries in particular with the aim to support renewable energy generation e.g. through feed in tariffs or direct payments to Renewable Energy Supply projects;
 - the possibility to substitute the equivalent energy supply of the displaced asset through improved energy conservation measures e.g. efficiency measures in housing, state investment in substitute heat alternatives which would enable to not rely on the displaced asset;
 - allocating the equivalent state aid instead to competing actors of the polluter in question;
 - overall impact on job creation, eco-innovation, compatibility with relevant environmental quality standards as to the various alternative options concerned (e.g. scale, conditions and beneficiary of proposed aid schemes);
 - other potential effects of supporting a given activity on the environment, health, competition, and EU level playing field;
 - assessment on how the aid scheme and options considered constitutes an “enabling activity” in the meaning of Article 16 of Regulation 2020(852).

The Member State and/or the beneficiary must provide the necessary evidence in relation to the internalisation of external cost assessment. Where no estimation



can be made in relation to point d) or e) under point 4 of this Annex, the Commission shall further develop guidance on how those internalisations of costs can be carried out, in line with scientifically acceptable standards.

Guidance or other criteria developed by the Platform on Sustainable Finance in accordance with Article 20 of Regulation 2020(852) shall apply to the best value for money assessment.

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