

EuroNatur Foundation response to the Consultation on the draft revised Climate, Energy and Environmental Aid Guidelines (CEEAG) June - July 2021

EuroNatur welcomes the opportunity to provide feedback on the revised Climate, Energy and Environmental Aid Guidelines (CEEAG). This feedback focuses on the impact of state aid on nature, in particular from hydropower and biomass.

The European Union and its Member States will need to change business as usual in order to deliver on the objectives of climate neutrality, climate change adaptation, circular economy, zero pollution and the protection and recovery of biodiversity. The efforts to be made are tremendous and will not be possible without the intervention of the public sector as an instigator. The draft revised Climate, Energy and Environmental Aid Guidelines (CEEAG) are one key driver of this action and should therefore be revised appropriately.

The revisions of the guidelines, in the context of achieving the Green Deal, should be ambitious, supporting both the climate objectives as well as the targets set by the Biodiversity Strategy 2030¹. While we very much welcome the integration of the Environmental Protection Aid section, we consider that the use of harmful energy systems such as **hydropower** and the use of **wood biomass** are highly detrimental and opposite to the transition we urgently need. The use of these sources should be specifically discouraged as a result of their high negative impact on nature.

Hydropower plants have proven to cause dramatic change in freshwater biodiversity and surrounding species. Besides disrupting habitats, redefining landscapes and altering the water's quality, hydropower plants are barriers to the transportation of sediments down the river. There are currently not enough mitigation possibilities to reduce the negative impact of hydropower. Furthermore, dam reservoirs produce CO₂ gas emissions while very little energy is produced compared to the costs for maintaining them. These impacts are caused by large and small hydropower plants, of which the latter represent most new constructions in the European Union. Building new hydropower plants runs directly counter to the commitments expressed in the EU Biodiversity Strategy to restore at least 25,000 km of free-flowing rivers, in ensuring species and habitats under the Birds and Habitats Directives such as alluvial forests and wet meadows can be protected, and is incompatible with the achievement of a good status of water bodies by 2027 as required under the Water Framework Directive (WFD).

Forests represent 30% of all land habitats in the EU². Their protection is fundamental to tackling the biodiversity crisis and the climate crisis. Of the 81 forest habitat types protected by the Habitats Directive, only 14% are in good/favourable conservation status, with many still to be designated. Governments of EU Member States are doing very little to tackle or to even control biodiversity loss, and thus threaten the EU's last precious forests. In 2015, of reported removals, 522 million cubic meters of forest was cleared for biomass and other uses, an 18% increase since 2009, which is equivalent to losing 6 football fields every hour in

¹ https://ec.europa.eu/commission/presscorner/detail/en/fs_20_906

² https://ec.europa.eu/environment/forests/index_en.htm

Europe³. One major impact of the use of wood biomass for energy production is the removal of wood in protected areas (cf. complaints and infringement procedures in Romania: INFR(2020)2033, INFR(2020)2238, INFR(2020)2297) relating to forest management in Natura 2000 sites). These logging activities lead to the decline in species populations contradicting the EU Birds and Habitats Directives.

EuroNatur Foundation's demands regarding the CEEAG revision:

1. **The guidelines should specifically state that renewable energy with high impact on nature, in particular new hydropower and wood biomass production facilities should not be eligible for state aid.**
2. **Existing hydropower facilities should not receive any new incentives and should therefore not be eligible to state aid besides for well defined, short-term outphasing.**
3. **State aid should not be delivered to existing wood-biomass facilities.**
4. **It should be specifically clear that there should be no feed-in tariffs for existing micro-hydropower plants.** The current feed-in-tariff for hydropower installations below 0.5 MW has facilitated continuous development of many small hydropower plants.
5. **The objectives of the biodiversity strategy and in particular the Birds and Habitats Directives should be clearly set out and their achievement supported by the guidelines.** As shown by a recent IPBES [report](#), biodiversity loss and climate change won't "be successfully resolved unless both are tackled together", so the nature protection dimension should be on the same footing as climate mitigation in the CEEAG. The efforts to tackle greenhouse gas emissions are welcomed but efforts to achieve biodiversity conservation and restoration should be specified.
6. **The guidelines should invoke the “do no significant harm” principle (DNSH) as a means to set direction to the CEEAG of which type of renewable energy to support.** The current CEEAG draft does not protect against harmful projects, and instead, by referring to “DNSH”, it is just stating that projects should implement environmental legislation⁴. Complying with existing EU environmental legislation is a given, but Member States fail to do so (e.g. large numbers of infringement procedures) because there isn't sufficient political direction to pre-empt harm.
7. **State aid should be granted to allow the phasing out and closure of harmful energy production facilities.**

³ 1 Camia, A., Giuntoli, J., Jonsson, K., Robert, N., Cazzaniga, N., Jasinevičius, G., Avitabile, V., Grassi, G., Barredo Cano, J.I. and Mubareka, S., The use of woody biomass for energy production in the EU, EUR 30548 EN, Publications Office of the European Union, Luxembourg, 2020, ISBN 978-92-76-27867-2 (online),978-92-76-27866-5 (print), doi:10.2760/831621 (online),10.2760/428400 (print), JRC122719.

⁴ Based on the DNSH of the EU Taxonomy applied to the “climate change” delegated act

Proposed amendments to the draft revised CEEAG

1. New hydropower and wood biomass facilities should not be eligible to state aid.

Amendment 1

Proposed draft CEEAG text	Proposed amendments
<p><i>71. Measures that directly or indirectly involve support to fossil fuels, in particular the most polluting fossil fuels, are unlikely to create positive environmental effects and often have important negative effects because they can increase the negative environmental externalities in the market. The same applies for measures involving new investments in natural gas, unless it is demonstrated that there is no lock-in effect. This will in principle render a positive balancing for such measures unlikely, as further explained in Chapter 4</i></p>	<p><i>71(a) (NEW) Measures that involve support to hydropower and wood biomass facilities are unlikely to create positive environmental effects and often have important negative effects because they can increase the negative environmental externalities in the market. This will render a positive balancing for such measures impossible.</i></p>
<p><i>Justification:</i></p> <p><i>Hydropower and wood biomass are not a cost-effective renewable energy solution available on the market. Their construction causes high nature damages that cannot be mitigated and where the “polluter pays” principle cannot be applied. Therefore, the EU should move away from such renewable energies</i></p>	

Amendment 2

Proposed draft CEEAG text	Proposed amendment
<p><i>76. Support for biofuels, bioliquids, biogas and biomass fuels can only be approved to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts.</i></p>	<p><i>76. Support for biofuels, bioliquids, and biogas and biomass fuels can only be approved to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts.</i></p>

Justification:

While the use of certain low impact biofuels is necessary to be integrated into the energy mix, wood-biomass, due to its tremendous impact on nature cannot be considered alongside with bioliquids and biofuels. Cutting and burning trees is not a solution to resolve the climate crisis nor the biodiversity crisis. Besides this inherent harm, wood-biomass production leads to state sponsored illegal logging in protected areas.

Amendment 3

110. Similarly, measures that incentivise new investments in energy or industrial production based on natural gas may reduce greenhouse gas emissions and other pollutants in the short term but aggravate negative environmental externalities in the longer term, compared to alternative investments. For investments in natural gas to be seen as having positive environmental effects, Member States must explain how they will ensure that the investment contributes to achieving the Union’s 2030 climate target and 2050 climate neutrality target. In particular, the Member States should explain how a lock in of this gas-fired energy generation or gas-fired production equipment will be avoided. For example, this may include binding commitments by the beneficiary to implement decarbonisation technologies such as CCS/CCU or substitute natural gas by renewable or low carbon gas or to close the plant on a timeline consistent with the Union’s climate targets⁶⁴.

110(a) (NEW) The Commission also considers that measures that incentivise investments in renewable energy that has a high impact on nature, such as hydropower and wood biomass facilities (including existing river barriers retrofitted into hydropower plants) aggravate negative environmental externalities in the longer term, may aggravate market failures, creating inefficiencies to the detriment of consumer, social welfare and nature restoration. They will not be considered to have any positive environmental effects, given the incompatibility of these with the EU Environmental legislation, in particular the Birds Directive, the Habitats Directive and the Water Framework Directive, as well as the EU’s 2030 commitments in the Biodiversity Strategy commitment.

Justification:

Greenhouse gas emissions are not the only indicator that needs to be taken into account when deciding which renewable energy should receive aid. The impact on nature is highly relevant and should therefore be fully integrated into the guidelines. Financial incentives to high impact energy sources have no positive environmental effects and will contribute to create market distortions and aggravate negative externalities.

2. State Aid to existing wood-biomass or hydropower facilities should not be attributed, besides in the case of a well defined, short-term outphasing process with specific goals and objectives.

Amendment 4

Proposed draft CEEAG text	Proposed amendments
<p>76. Support for biofuels, bioliquids, biogas and biomass fuels can only be approved to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts.</p>	<p>76 (a) (NEW). Support for wood-biomass fuels can not be approved as these fuels are not compliant with the Directive 2009/147/EC and Council Directive 92/43/EEC.</p>
<p><i>Justification: No state aid should be given to encourage any activity leading to wood-biomass production. Indeed no economic incentive can be attributed to an activity that is non-compliant with European law.</i></p>	

3. There should be no feed-in tariffs for existing micro-hydropower plants

Amendment 5

Proposed draft CEEAG text	Proposed amendments
<p>104. The aid must be designed to prevent any undue distortion to the efficient functioning of markets and, in particular, preserve efficient operating incentives and price signals. For instance, beneficiaries should remain exposed to price variation and market risk, unless this undermines the attainment of the objective of the aid. In particular, beneficiaries should not be incentivised to offer their output below their marginal costs and must not receive aid for production in any periods in which the market value of that production is negative</p>	<p>104. The aid must be designed to prevent any undue distortion to the efficient functioning of markets and, in particular, preserve efficient operating incentives and price signals. For instance, beneficiaries should remain exposed to price variation and market risk, unless this undermines the attainment of the objective of the aid. In particular, beneficiaries should not be incentivised to offer their output below their marginal costs and must not receive aid for production in any periods in which the market value of that production is negative⁶².</p> <p>⁶² Small scale renewable electricity installations, with the exception of hydropower plants and wood biomass fueled installations, may benefit from direct price support that covers the full costs of operation and does not require them to sell</p>

	<p><i>their electricity on the market, in line with the exemption in Art 4.3 of Directive (EU) 2018/2001. Installations shall be considered as small scale if their capacity is below the applicable threshold in Article 5 of the Regulation (EU) 2019/943.</i></p>
<p><i>Justification:</i></p> <p><i>Feed-in tariffs have contributed to promote the continuous development of many small and micro hydropower plants since the derogation is applicable to installations below 0.5MW in the 2014-2020 EEAG. Small installations are particularly harmful and provide a very negligible contribution to electricity generation.</i></p>	

4. Environmental legislation and nature protection should be more streamlined into the CEEAG.

Amendment 6

Proposed draft CEEAG text	Proposed amendments (Introduction)
<p><i>1. The Commission has made the European Green Deal a top political priority, with the aim of transforming the Union into a fair and prosperous society with a modern, resource-efficient and competitive economy, while leaving no one behind. The climate ambitions of the Commission were reinforced in 2019 with the Green Deal Communication¹, setting an objective of no net emissions of greenhouse gases by 2050. In order to set the Union on a balanced, realistic and prudent path to becoming climate neutral by 2050, the Commission has also proposed to reduce greenhouse gas emissions by at least 55 % by 2030 compared to 1990 levels². Those ambitious targets have been enshrined in the European Climate Law.</i></p>	<p><i>1. The Commission has made the European Green Deal a top political priority, with the aim of transforming the Union into a fair and prosperous society with a modern, resource-efficient and competitive economy, while leaving none behind. The climate ambitions of the Commission were reinforced in 2019 with the Green Deal Communication, setting objectives of no net emissions of greenhouse gases by 2050 as well as protecting, conserving and enhancing the EU's natural capital. In order to set the Union on a balanced, realistic and prudent path to becoming climate neutral by 2050, the Commission has also proposed to reduce greenhouse gas emissions by at least 55 % by 2030 compared to 1990 levels². Those ambitious targets have been enshrined in the European Climate Law³. Additionally, the Biodiversity Strategy 2030 is a core part of the European Green Deal, setting ambitious targets and requirements to legally protect at least 30% of EU's land and 30% of EU's sea areas (with 10% of strictly protected areas).</i></p>

Justification:

The Biodiversity Strategy 2030 has been adopted by the Council and the European Parliament as a key component of the European Green Deal. The climate objectives should always be set out together with the biodiversity objectives. Based on the IPBES report⁵, biodiversity loss and climate change won't be "successfully resolved unless both are tackled together". The current draft might rather lead to limited progress on the climate crisis at the cost of biodiversity.

Amendment 7

<p>3. Delivering on the objectives of climate neutrality, climate change adaptation, resource and in particular energy efficiency, circularity, zero pollution and recovery of biodiversity and accompanying this green transition will require significant efforts and adequate support. To achieve the ambition set out in the Green Deal Communication, significant investment, including in renewable energy sources, will be required. The Commission has estimated that achieving the newly increased 2030 climate, energy and transport targets will require EUR 350 billion of additional annual investment compared to the levels in 2011-2020, with further EUR 130 billion a year for the other environmental objectives estimated earlier. The magnitude of this investment challenge requires mobilising both the private sector and public funds in a cost-effective manner. This will affect all sectors and therefore the Union economy as a whole.</p>	<p>3. Delivering on the objectives of climate neutrality, climate change adaptation, resource and in particular energy efficiency, circularity, zero pollution and recovery of biodiversity and accompanying this green transition will require significant efforts and adequate support. [...] This will affect all sectors and therefore the Union economy as a whole. In order to achieve the climate objectives, biodiversity restoration and protection needs to be considered as our best ally and core action (cf. IPBES report[1]).</p> <hr/> <p>[1] https://www.ipbes.net/sites/default/files/2021-06/20210606%20Media%20Release%20EMBARGO%203pm%20CEST%2010%20June.pdf</p>
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Justification: Investing in biodiversity conservation and restoration will benefit the whole European Union delivering health, welfare and economic benefit. Nature needs to be considered as the strongest ally when defining the tools and solutions to tackle the climate crisis. According to the IPBES report, "changes in biodiversity, in turn, affect climate, especially through impacts on nitrogen, carbon and water cycles". Any action that leads to biodiversity loss is making the fight against climate change less effective.

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<https://www.ipbes.net/sites/default/files/2021-06/20210606%20Media%20Release%20EMBARGO%203pm%20CEST%2010%20June.pdf>

Amendment 8

<p>7. These guidelines provide guidance on how the Commission will assess the compatibility of environmental protection, including climate protection, and energy aid measures subject to the notification requirement under Article 107(3), point (c), of the Treaty. Any reference to ‘environmental protection’ in these guidelines should be understood as a reference to environmental protection, including climate protection.</p>	<p>7. These guidelines provide guidance on how the Commission will assess the compatibility of environmental protection, including climate and biodiversity protection, and energy aid measures subject to the notification requirement under Article 107(3), point (c), of the Treaty. Any reference to ‘environmental protection’ in these guidelines should be understood as a reference to environmental protection, including climate protection.</p>
<p><i>Justification:</i></p> <p><i>In the pursuit of international leadership, the European Commission needs to set the pace and mainstream the strong dependency between climate and biodiversity, two aspects that cannot be thought of separately. By including both elements into EU legislation a great and necessary step ahead will be made in order to mainstream this interconnection, delivering one important part of the solution.</i></p>	

Amendment 9

<p>18. (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>18. (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 substantially reduce the risk of such damage, to protect and or to restore biodiversity, ecosystems or natural resources 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><i>Justification: The Biodiversity Strategy 2030 has set binding objectives in order to restore and conserve biodiversity. As a key contributor to the climate objectives, biodiversity should not be harmed but rather set as a priority alongside climate objectives due to their dependency. B</i></p>	

Amendment 10

	<p>18. (38)(a) (NEW) ‘climate protection’ means tackling climate change through climate mitigation, including the use of renewable sources of energy and other techniques to reduce greenhouse gas emissions, as well as protecting natural carbon sinks and reinforcing the adaptive capacity and resilience of ecosystems.</p>
<p><i>Justification: Energy production even if renewable is an economic activity that uses a natural source and that will alter its surroundings and have a small or bigger impact on it. Energy production even if this activity leads to greenhouse gas emission reduction compared to other non renewable sources is inherently a different activity than the protection of the environment.</i></p>	

Amendment 11

<p>32. If the supported activity or aid measure or the conditions attached to it, including its financing method when it forms an integral part of the measure, entail a violation of relevant Union law, the aid cannot be declared compatible with the internal market. This may be the case, for instance, where the aid is subject to clauses conditioning it directly 27 or indirectly on the origin of products or equipment, such as requirements for the beneficiary to purchase domestically produced products.</p>	<p>32. If the supported activity or aid measure or the conditions attached to it, including its financing method when it forms an integral part of the measure, entail a violation of any relevant Union law including environmental law, the aid cannot be declared compatible with the internal market. This may be the case, for instance, where the aid is subject to clauses conditioning it directly or indirectly on the origin of products or equipment, such as requirements for the beneficiary to purchase domestically produced products.</p>
<p><i>Justification: Specific focus should be put on environmental EU legislation since we are here specifically looking at economic activities to be designed in the most sustainable ways from an environmental point of view.</i></p>	

Amendment 12

<p>69. In that balancing exercise, the Commission will pay particular attention to Article 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council⁵⁰, including the ‘do no significant harm’ principle, or other comparable methodologies. Furthermore, as part of the assessment of the negative effects on</p>	<p>69. In that balancing exercise, the Commission will pay particular attention to Article 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council, including the ‘do no significant harm’ principle, or other comparable methodologies. [...]</p>
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competition and trade, the Commission may take into account, where relevant, negative externalities of the aided activity where such externalities adversely affect competition and trade between Member States to an extent contrary to the common interest by creating or aggravating market inefficiencies including in particular those externalities that may hinder the achievement of climate objectives set under EU law.

69. (NEW) The Commission will pay particular attention to the Birds Directive (Directive 2009/147/EC), the Habitats Directive (Directive 92/43/CEE), the Water Framework Directive (Directive 2000/60/EC) and the Marine Strategy Framework Directive alongside with all relevant EU legislation and new legislation aiming to implement the Biodiversity Strategy 2030.

Justification:

The 'Do no significant harm' principle has proven to be inefficient in identifying measures potentially harmful as shown with the Recovery and Resilience Facility attribution process. Matching compliance with existing EU legislation, comprising environmental legislation does not hinder harm to the environment. Therefore, adding an additional compliance check might make sense if this is not understood as a safeguard for nature but rather a simple minimum standard compliance check. It requires much more ambition to create an appropriate safeguard.