



Climate Action Network (CAN) Europe is Europe's leading NGO coalition fighting dangerous climate change. With over 170 member organisations from 38 European countries, representing over 1.500 NGOs and more than 47 million citizens, CAN Europe promotes sustainable climate, energy and development policies throughout Europe.

CAN Europe response to public consultation on the revised Climate, Energy and Environmental Aid Guidelines (CEEAG)

Introduction:

CAN Europe welcomes the initiative of bringing State aid guidelines for climate, energy and environmental protection (CEEAG) in line with the EU's climate commitments. We strongly believe that a new state aid regime is required to boost the EU's climate ambition and fulfil its commitment under the Paris Agreement to limit global temperature rise to 1.5°C. The revision of CEEAG can be a powerful tool if it has the right elements to incentivise rapid deployment of renewables based on the energy efficiency first principle - as a horizontal guiding principle of European climate and energy governance. This also entails giving right signals for discouraging fossil fuel investments and excessive support to unproven technologies that are not currently available at market scale, which will only create delays in real, just energy transition.

At the end of 2020, the European Commission kicked off an initiative to align competition policy with the European Green Deal¹. This initiative was welcomed by the civil society. However, such an initiative to green the competition policy, and state aid as part of it, needs to put internal market rules and climate action on equal footing. Internal market should work in favour of climate goals: application of the do no harm principle should be mandatory, not optional. So far, the Commission's perspective has mostly emphasised risks for climate action and energy transition related to potential market distortions and stranded assets. This is a relevant but a worryingly limited approach. To this day, based on all communication regarding greening competition policy including the draft CEEAG, **it is unclear how the Commission will perform a compliance check of state aid cases with Union environmental law, climate and energy legislation when analysing these cases.**

While we understand that ensuring internal market functioning is the main mandate of DG Competition, we are strongly of the opinion that the new state aid regime must also prioritise

¹ https://ec.europa.eu/competition/information/green_deal/index_en.html

supporting climate, energy and environmental legislation in order to align with the European Green Deal, and help the EU to contribute to achieving the Paris Agreement's 1.5°C goal. Ongoing heat waves, floods, wild forest fires and other climate disasters clearly demonstrate that human, nature and economic costs of inaction are overwhelming. Incentives for private and public investments must explicitly support ambitious climate action and a just energy transformation as the costs of limited mitigation action will be very high² with severe social consequences. In light of the climate emergency, this is also an imperative to establish coherence with the EU's commitment to the Paris Agreement.

It is noted in the Commission's draft CEEAG communication³, referring to their own analysis, that "achieving the newly increased 2030 climate and energy targets will require EUR 350 billions 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". Thus, all subsidies, including state aid, must be utilised to unleash a large scale of renewables and energy savings investments rapidly, and they must be shifted away from supporting all types of fossil fuels.

The Paris Agreement Compatible (PAC) Scenario, by CAN Europe and European Environmental Bureau, shows that a pathway for the just transition of the EU's energy system that is in line with the EU's commitment to the Paris Agreement is viable⁴. This means: **mobilisation of energy savings and green recovery potentials through accelerating deep renovation of buildings, a modernisation of industrial production processes, and an 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 for electricity production 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.** This is not only needed, but also achievable for the investments in renewable energy and energy efficiency to substantially increase in the next decade, as the investment decisions made today will determine the European economy's progress on the pathway to sustainability and climate neutrality. They will have a direct impact on the communities to benefit from these investments. Therefore, all state aid decisions must be put forward with this in mind, and elements of the revised CEEAG must raise the bar to incentivise both investors - to shift their business models without disrupting the internal market, and national decision makers - to put in place strong regulatory measures enabling rapid and adequate rollout of projects as part of an economy-wide just transformation.

The International Energy Agency's (IEA) flagship report on roadmap for the global energy sector to achieve net zero by 2050 calls for unprecedented scaling up of solar and wind capacity this decade, requiring governments to significantly strengthen and implement their

² <https://www.swissre.com/media/news-releases/nr-20210422-economics-of-climate-change-risks.html>

³ https://ec.europa.eu/competition-policy/system/files/2021-06/CEEAG_Draft_communication_EN.pdf

This information was also referred to in the Questions & Answers on the 2030 Climate Target Plan document from 2020: https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1598

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https://www.caneurope.org/content/uploads/2020/06/PAC_scenario_technical_summary_29jun20.pdf#:~:text=In%20view%20of%20the%20EU,updated%20to%2065%25%20emission%20reductions.

energy and climate policies⁵. According to the report, **renewable energy investments will have to triple worldwide by 2030 and no new fossil fuel supply would come online after 2021, if governments are serious about their net zero pledges for 2050**. The report also acknowledges that inefficient coal power plants need to close by 2030 the latest, and that fossil gas cannot be considered as a transition fuel away from coal. This means no support must be given to coal plants to operate beyond 2030, no new fossil fuel projects (including fossil gas) should come online after 2021 and any support for these projects would put the EU's 2050 climate neutrality target under question.

We appreciate the opportunity to give feedback for the Commission's CEEAG revision proposal. CAN Europe's response to the public consultation focuses on the following main aspects of the categories of aid listed in chapter four of the draft CEEAG: *aid for renewable energy, aid for gas infrastructure, aid for coal closures, aid for the improvement of the energy and environmental performance of buildings, aid for district heating and cooling*.

CAN Europe feedback on certain categories of aid proposed in the draft CEEAG

1- Aid for renewable energy must be specified and distinguished from other decarbonisation technologies

The CEEAG proposal no longer mentions explicitly about aid for renewable energy sources but lists renewables as one of the greenhouse gas emission reduction and removal technology categories, among CCS/CCU, hydrogen, and cogeneration technologies. Firstly, it is very worrying that the source of hydrogen production is not specified in the draft, as decarbonising the economy in line with the 1.5°C objective leaves no room for any type of fossil fuels-based hydrogen. Any support for hydrogen must be given to renewable hydrogen projects only in certain sectors for which other cleaner alternatives such as electrification and energy efficiency measures are not currently available⁶. Moreover, the uses of CCS/CCU are referred to as mainstream decarbonisation technologies without explicitly excluding the energy sector. Energy savings and sustainable renewable energy technologies are the only options to replace climate polluting technologies in the energy sector. Investments in the energy system should transform it into a highly flexible system while grids, storage and demand response technologies should facilitate further deployment of energy savings and renewable energy.

Secondly, this kind of bundling of technologies together poses major risks for achieving the EU's climate objectives. It risks diminishing public support for renewable energy sources,

⁵ https://iea.blob.core.windows.net/assets/405543d2-054d-4cbd-9b89-d174831643a4/NetZeroBy2050-ARoadmapfortheGlobalEnergySector_CORR.pdf

⁶ https://caneurope.org/content/uploads/2021/02/CAN-Europe_position-on-hydrogen_February-2021.pdf

distracting the attention from the fact that the EU needs to triple RES investments in order to meet its binding EU 2030 renewable energy target, fulfil its commitment to the Paris Climate Agreement and climate neutrality target, and not providing strong incentives for national regulatory measures to support investments flowing to untapped renewables potentials. It could delay a true, rapid and just energy transition as it would give a signal about public support availability for false solutions which are currently non-existent, non-reliable and/or not available at market scale, such as CCS/CCU in the energy sector and inefficient use of hydrogen, that can be used to justify continuing investments in fossil fuels - jeopardising the EU's climate objectives. **Renewables should be given a separate chapter in the CEEAG - not including the so-called 'low carbon' sources, in order to give the governments a right signal to put in place enabling RES regulations, and to direct special support to small renewables producers including energy communities.**

A dedicated RES chapter must explicitly emphasise aid for renewable energy communities (RECs) and smaller RES actors as they have a unique market position - completely disadvantaged in competitive bidding under the current EEAG. The draft CEEAG does not make any reference to RECs. Energy communities are a new legal concept under EU law, with unique characteristics placing them at a distinct competitive disadvantage in the market, and particularly in accessing renewables support schemes. Article 22 (7) of the REDII mandates Member States to take into account the specificities of RECs when designing their support schemes. When this important requirement is not referenced and built-in to the CEEAG, it leaves Member States with an unclear message⁷. **Member States need clear guidance from the CEEAG on how to develop and justify supportive measures for RECs in compliance with their RED II obligations.** Many Member States are still unsure how to formulate new EU rules on energy communities into law, or to develop supportive measures for the promotion of renewable energy communities at the national level, as the sector is either nascent or non-existent⁸.

The draft CEEAG refers to exempting small renewables production installations from the requirement to participate in competitive bidding while lowering the existing threshold for the exemption. **Making RECs and small renewables producers exemptions to competitive bidding schemes does not directly help channelling more government support - in terms of subsidies and regulatory ease. They should be bound by special schemes, under a dedicated chapter to RES in the CEEAG.**

Finally, CEEAG must factor in the external costs and the scale of deployment of energy sources. Without factoring in climate, pollution, health and environmental impacts as

⁷ <https://communitypowercoalition.eu/2021/07/15/eu-state-aid-guidelines-must-support-community-energy-letter/>

⁸ <https://www.rescoop.eu/toolbox/renewable-energy-communities-why-they-deserve-support-how-the-guidelines-on-state-aid-for-climate-environmental-protection-and-energy-can-help>

external costs, the state aid regime will lack the fundamentals of alignment with the European Green Deal. State aid schemes for biomass is a good example of the potential damaging impacts of extensive support to biomass, when given without assessing the external costs and scale of deployment. The revised state aid regime must take into account the European Green Deal's cost-effective transition to climate neutrality by 2050 and a more circular, efficient use of limited natural resources when support to biomass is considered. The net carbon impact of the use of biomass is understood to depend on many factors, including scale of deployment and resulting harvest levels, the type of feedstock used, the efficiency of energy conversion, and counterfactuals, among others.

2- No state aid should be authorised for fossil gas infrastructure

Fossil gas is not a transition fuel and the EU cannot continue to subsidise investments in the sector. The draft CEEAG leaves the door open for fossil gas, recognising it as a transition fuel under several aid categories with different provisions, such as aid for fossil gas projects for energy or industrial production falling within the scope of "measures for the reduction of greenhouse gas emissions" together with true renewable energy sources in the same basket, under aid for security of supply (capacity mechanisms) category, and repeating similar provisions for fossil gas under aid for district heating and cooling category.

We understand that the Commission made an effort not to leave the door wide open for fossil gas in their proposal, committing to the verification of such aid measures not causing lock-in effects prolonging the consumption of fossil-fuel-based energy. However, **the draft falls short of a clear definition of what the Commission implies with the 'lock-in effect', and leaves it to the Member States to explain how this effect would be avoided and how aid for fossil gas would not contradict the Union's climate targets.** It is unclear whether the Member States must prove that aid does not cause a lock-in to greenhouse gas emissions (referring to the EU's greenhouse gas emissions budget) or only lock-in to fossil gas-fired energy production (referring to stranded assets and financial issues only). Details of any aid provisions considered is important to clarify as any new fossil gas investment made today will cause a lock-in to fossil-gas technology at least for the next two decades, which the EU cannot do if it wants to deliver on its fair share to reduce emissions in the escalating climate emergency.

Recent studies show that Europe risks €87 billion in stranded fossil gas assets if all the planned public and private investment increases in gas infrastructure (including gas pipelines, LNG terminals etc.) come to life, threatening to lock-in greenhouse gas emissions beyond 2050⁹.

⁹ <https://globalenergymonitor.org/report/europe-gas-tracker-report-2021/>

The draft CEEAG acknowledges negative externalities of fossil gas in the long-run, but still considers investments in fossil gas to have positive environmental effects, should the Member States explain how they will ensure that the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target. This is misleading. On top of that, the proposition makes no distinction between support for fully Paris-compliant energy infrastructure (i.e. RES deployment, RES based hydrogen) and fossil gas infrastructure, missing the opportunity to support further energy systems decarbonization.

New gas investments are not compatible with the EU's 2030 and 2050 climate targets.

Thus Member States should not be asked to explain how fossil gas sits together with the EU's climate ambition. Gas demand already peaked in the last decade in the majority of EU countries and dropped¹⁰ in 2019 by more than 10% to 40% compared to the respective peak years¹¹. **Fossil gas consumption will be reduced through applying the energy efficiency first principle, deep renovations, electrification and shifting to 100% renewables.** Burning fossil gas not only produces carbon dioxide (CO₂), its extraction and transmission also emits methane, a greenhouse gas with an 86 times stronger climate warming potential than CO₂ over a 20-year timeframe. Methane emissions occur across the entire fossil gas supply chain and need to be drastically reduced¹². **The EU does not need any new fossil gas infrastructure and any aid for it will be direct fossil fuel subsidies, contradicting the fossil fuel phase out commitment enshrined under the recitals of the European Climate Law, and the 2050 climate neutrality objective.**

Chapter 4.8 on aid for the security of electricity supply paves the way for capacity aid measures to new fossil gas infrastructure and units if they replace 'more polluting energy sources'. A positive element of the draft CEEAG is the classification of coal, lignite, peat, oil and diesel as the most polluting energy sources and thus considering aid measures for these sources unlikely. However, this should refrain from reflecting fossil gas as a clean energy source, promoting it as a replacement for the more polluting sources and making it eligible for major fossil gas subsidies. Throughout the draft CEEAG, fossil gas is being treated differently to other 'most/more polluting fossil fuels' while there is no sound scientific justification nor legal basis for this preferential treatment. **Aid for new gas infrastructure should not be considered at all; it would contradict the EU's 2030 climate target as well as its climate neutrality commitment.** CAN Europe considers that current EU targets will be insufficient to limit global temperature rise to 1.5°C in line with the Paris Agreement, and that the EU should rather aim to reduce greenhouse gas emission by 65% in 2030¹³ and

¹⁰ https://ec.europa.eu/eurostat/databrowser/view/nrg_cb_gas/default/table?lang=en

¹¹ Those countries include France, Hungary, Italy, Lithuania, Latvia, Romania, Slovakia, Denmark, Bulgaria and Slovenia.

¹² <https://caneurope.org/content/uploads/2021/06/Fossil-Gas-Manifesto-2021.pdf>

¹³ <https://caneurope.org/position-2030-climate-policy-architecture/>

phase out fossil gas completely by 2035¹⁴. Nonetheless, meeting the current EU targets will require a reduction of 22-37% of the EU's consumption of fossil gas by 2030 (compared to 2015) and a continued decline to negligible levels by 2050¹⁵.

The contradiction between new gas investments and net zero targets is also demonstrated in the IEA flagship report¹⁶ on 2050 net zero pathway. Moreover, European Investment Bank (EIB) adopted a new lending policy in 2019, in which it commits to ending financing for fossil fuel energy projects from the end of 2021¹⁷ - including traditional gas infrastructure and power generation technologies resulting in greenhouse gas emissions above 250 gCO₂ per kWh of electricity generated (going beyond the Emissions Performance Standard of 550gCO₂/kWh that effectively excluded coal, oil and unabated natural gas, in their previous lending policy).

The example of brand-new coal power units¹⁸ getting operational due to capacity contracts signed a couple of years ago when coal electricity generation was more profitable, and consequently beginning operations as stranded assets, must be a serious warning not to repeat the same mistake for fossil gas-fired power assets, which would be directly financed by citizens' pockets should they receive capacity payments.

Energy efficiency first principle must be better highlighted and explicitly mentioned throughout the CEEAG because without ambitious demand measures, the focus on future energy supply scenarios risks lock-in to not only fossil gas but also to oversupply and misleading solutions which are currently non-existent, non-reliable and/or not available at market scale, such as CCS/CCU and hydrogen. The Energy Efficiency first principle must inform whether aid to more energy production is necessary in the first place, and is particularly relevant in the sections relating to decarbonisation measures, security of supply and energy infrastructure.

Hydrogen and its derivatives (liquid synthetic fuels, renewable ammonia) could supply up to one-fifth of the EU's final energy demand in 2050 (rising from 566 TWh in 2030, i.e. 6% of the EU's final energy demand, up to 1109 TWh in 2050)¹⁹. Hydrogen, if produced from renewable electricity, is one of the most promising technologies for meeting this need. However, **as renewable hydrogen is not a primary source of energy but an energy carrier requiring conversion from renewable electricity and implying important energy losses, we can consider it a limited resource, needing reflection on its development and use and its**

¹⁴ <https://caneurope.org/content/uploads/2021/06/Fossil-Gas-Manifesto-2021.pdf>

¹⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020SC0176>

¹⁶ https://iea.blob.core.windows.net/assets/405543d2-054d-4cbd-9b89-d174831643a4/NetZeroby2050-ARoadmapfortheGlobalEnergySector_CORR.pdf

¹⁷ https://www.eib.org/attachments/strategies/eib_energy_lending_policy_en.pdf

¹⁸ <https://caneurope.org/coal-expands-in-poland-despite-eu-law-violations/>

¹⁹ https://caneurope.org/content/uploads/2020/06/PAC_scenario_technical_summary_29jun20.pdf

ability to deliver at the scale and speed necessary. Given that today almost all hydrogen comes from fossil fuels, there is a significant risk that the European hydrogen sector could fail to shift completely to renewable hydrogen and instead becomes a way to justify continued investments in fossil fuels and maintaining legacy or building new infrastructure that should instead be decommissioned.

It is regrettable to note that in the draft CEEAG “low-carbon”, i.e. fossil hydrogen with the promise of CCS, and renewable hydrogen are treated equally, carbon-intensive hydrogen is not completely excluded and the deployment of hydrogen infrastructure does not aim for a “no regret” scenario to avoid future infrastructure lock-in. The Communication specifies that aid measures should not “stimulate or prolong the consumption of fossil fuels” and that Member States should instead commit to use mainly renewable or “low carbon” fuels. This again puts fossil hydrogen on an equal footing with renewable hydrogen while the lack of clear definition around “low-carbon fuels” opens the door for potential loopholes. **Hydrogen should not serve as an excuse to continue gas infrastructure development in a “business as usual mode” and create further stranded assets which will have to be borne by consumers.** Nor should it prolong dominating energy import models from third countries which might have low levels of energy access or their own just transition challenges²⁰.

3- Aid for early coal infrastructure closures must support a Paris-compatible coal phase out in 2030

The CEEAG include for the first time a section on aid for the early closure of coal, peat and oil shale plants and mines when a Member State decides to prohibit power generation from these sources at a certain date. Currently, all state aid demands to compensate for the early closure of coal and lignite activities are assessed by the Commission on an ad-hoc basis, outside the scope of state aid guidelines.

In the draft CEEAG, there is no latest date specified for aid to be given for coal plant closures, which risks aid measures functioning as fossil fuel subsidies for coal-fired electricity producers to support the continued operation of their stranded coal facilities until their closure at an excessively late but politically more convenient date. **A Paris-compatible plan for coal means a phase-out by 2030, at the very latest, in all Member States²¹. Moreover, the Commission’s own impact assessment to achieve the EU’s 2030 climate target expects coal-based power production to end by 2030²².** All aid given to coal operators beyond 2030

²⁰ For more details, see CAN Europe Hydrogen position paper define landmarks of a dedicated policy framework for renewable hydrogen while taking into account that it is still an immature technology which needs careful monitoring: https://caneurope.org/content/uploads/2021/02/CAN-Europe_position-on-hydrogen_February-2021.pdf

²¹ https://climateanalytics.org/media/report_coal_phase_out_2019.pdf

²² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020SC0176>

will prolong coal based power production by incentivising a late phase-out; become a major hurdle for the ambitious policy needed in the face of the global climate crisis; fail to complement the market dynamics -borne by the increase of ETS prices as they currently push investors away from coal; and prevent rigorous implementation of EU environmental legislation such as the Industrial Emissions Directive, Large Combustion Plants Standards, Water Framework Directive etc. - enforcement of which can drive much earlier and more cost-effective coal plant closures, such as in the Hemweg coal plant case in the Netherlands²³.

The dedicated chapter sets out compatibility rules for measures taken to compensate for the early closure of profitable coal, peat and oil shale activities, but it fails to define what is meant by ‘early closure’ and ‘profitable’. It does not refer to the Union's 2030 climate target and does not mention any final date for authorising aid measures. **In order to be in line with the Union’s binding climate targets for 2030 and 2050, this section should only apply to aid for the full and definitive closure of coal/oil/peat-fired power plants by 2030 at the latest in accordance with a closure plan.** It may not be granted to a coal-fired power plant whose closure was decided either by the operator or by the Member State before the adoption of these guidelines. If the coal-fired power plant for which closure aid is granted is not definitively closed by the date fixed in the closure plan endorsed by the Commission, the Member State concerned shall recover all aid granted in respect of the whole period covered by the closure plan.

The maximum aid intensity is not specified in the draft, which implies that 100% of the plants’ claimed foregone profits and/or so called “additional” or “exceptional” costs could be compensated. While this can be recommended for exceptional costs related to workers (early pensions, retraining, and other social costs -such as those that relate to obligations from upholding the European Pillar of Social Rights) from a just transition perspective, for all other costs it will fail to incentivise coal closure dates compatible with the Paris Climate Agreement objectives.

In order to ensure that the aid is fair and incentivises earliest closures in Member States with different exposure to coal, an aid intensity for closures that is capped and degressive of the closure dates, e.g. max 90% for closure of the plant before 2024, 70% for closure of the plant before 2027 and 50% for closure of the plant before 2030, is needed.

The draft CEEAG clarifies that only profitable plants could receive aid for early closure, and the coal power plant must close no later than one year from the award of the compensation that should facilitate the assessment of profitability calculations. However, **it does not explain how the profitability of the plants, many of which are already unprofitable, will be**

²³ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_863

assessed. This is an ongoing debate in the case of German lignite power plant closure compensations²⁴ demanded by the energy utilities, LEAG and RWE. The demand has been under in-depth investigation by the Commission - questioning the appropriateness of the profitability calculation methodology implemented by Germany, among other elements currently being assessed²⁵.

Defining timescale, types of foregone profits and costs and requiring independent and transparent evaluation of claimed profitability by experts, will help frame this and prevent the Commission from relying only on the Member States' and operators' own data and calculations. An asset valuation methodology that applies equally for all Member States must indicate a clear list of what can be included in foregone profits claims. Any subsidies such as capacity payments must be excluded from profitability calculations as some plants or units can only be kept running or deemed profitable because of the financial support they are currently receiving through capacity payments. Profitability should only be assessed for the closing units and the companies should not be compensated for their non-coal assets - including gas or biomass - and any profitability arising from subsidies paid for co-firing must also be excluded. Foregone profits must be calculated only after existing liabilities e.g. environmental rehabilitation and other pollution (remediation) costs, as well as obligations towards workers, are taken into account. Any calculation should also consider costs saved through early closure, for example fixed operating and maintenance costs that will not need to be paid once the plant is closed. **Coal plants' accelerated loss of profitability in the market conditions proves that the technically estimated economic lifetime of coal plants does not mean that they are profitable until the end. Thus, the Commission must scrutinize all profitability claims by coal and lignite operators, accounting also for the opportunity cost of not operating those plants.**

It is important to note that even if the beneficiary coal plant operators claim not using the compensation money for anything other than closure, in essence the aid gives them the competitive advantage for becoming actors in other sectors - such as renewable energy, freeing them from their costly stranded assets that threaten their social licence. This is a major support to coal investors on its own, and thus the Commission must ensure that the companies do not get overcompensated.

The CEEAG must also tackle the major loophole provided by the Rescue and Restructuring Aid Guidelines, potentially disincentivising a national early coal phase out debate. The Oltenia case in Romania shows how a utility's financial difficulties in paying for carbon permits can lead to a restructuring plan, including coal and new fossil gas plants running for

²⁴ <https://caneurope.org/can-europe-contribution-to-state-aid-sa-53625-2020-n-germany-compensation-of-rwe-and-leag-for-lignite-phase-out/>

²⁵ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_972

a very long time, to be supported by state aid²⁶. The case is currently under investigation by the Commission, and the final decision will have direct implications for the coal phase out and just transition debates in the country. Since Rescue and Restructuring Aid Guidelines are not revised in tandem with CEEAG, it provides a loophole for Member States to potentially opt for giving restructuring aid to their coal utilities first to make them profitable, only to compensate the companies for coal asset closures once they decide on a coal phase out date. This would be disproportionate aid but may not be visible as a loophole exists for the same utilities to go through different guidelines to receive unfair compensation for their poor financial decisions to remain in the coal generation business, without appropriately paying for all the external costs borne throughout their life cycles.

Examples of state aid granted to Polish operators to restructure their uncompetitive coal mines also shows that substantial amounts of aid can be used for debt cancellation or covering financial losses, and it neither facilitates faster closures, nor incentivises the government to plan for an early coal phase-out date. In Poland, state aid for hard coal mining restructuring aid in year 2003 equalled 17,5 billion PLN (3,8 billion EUR), 15 billion PLN (3.3 billion EUR) of which was used for the cancellation of the mines' debts to the state, which constitutes 85% of the granted sum²⁷.

The chapter in the draft does not include stringent transparency rules for coal closure compensation cases. Transparency requirements should be set as to the amount of greenhouse gas emissions effectively reduced by the aid, calculation of amounts, and adjustment parameters to avoid overcompensation. Clauses throughout the draft, referring to transparency and increasing incentives for stakeholder participation (see 3.2.1.4) must be repeated for this chapter.

4- Aid for the energy and environmental performance of buildings

The current draft leaves the door open for new fossil gas installations as long as Member States can justify these installations as transition investments. We welcome the Commission's acknowledgement of the long-term negative environmental consequences of incentivising new gas investments in buildings. It is positive that the Commission considers that the negative effects of aid for oil-fired or coal-fired energy equipment are unlikely to be offset, and thus signalling less likelihood of authorisation of state aid for this equipment. It is similarly welcome that cogeneration based on non-renewables or biomass is not eligible when it negatively impacts air quality or RES deployment, even though this could be further extended. However, there is a need to spell out more stringent assessment criteria for fossil

²⁶ <https://caneurope.org/subsidies-fossil-fuel-gorj-county/>

²⁷ K. Rutkiewicz, "STATE AID FOR RESTRUCTURING OF THE HARD COAL MINING INDUSTRY IN THE EUROPEAN UNION'S COMPETITION POLICY IN THE PERIOD 2002-2010", 2014 https://www.ue.katowice.pl/fileadmin/migrated/content/uploads/24_K.Rutkiewicz_Pomoc_publiczna_na_restrukturyzacje....pdf

gas equipment, including for efficient cogeneration, and clarify the risks associated with incentivising this kind of equipment. The opportunity cost for renewable energy equipment should be spelled out in the proposal - as they constitute the 'cleaner alternatives that are available in the market'. State aid should be granted to support the shift towards clean and sustainable heating solutions that are already available across Europe. The low temperature heat demand of buildings can be covered by a broad range of alternative renewable energy sources, such as renewable electricity that powers electric heat pumps, which capture ambient and geothermal heat, as well as solar thermal heat. Buildings can also be connected to district heating networks that supply the above-mentioned renewable heat sources. Doing otherwise would run against the EU commitment to work towards the achievement of climate neutrality in line with the Paris Agreement as well as against the objectives enshrined e.g. in the RED to promote the use of renewable energy in the heating and cooling sector as well as to mainstream renewable energy in buildings.

The current draft sets very unambitious thresholds for energy renovation, corresponding to shallow renovations (i.e. 20% energy savings) which is fully against higher 2030 energy targets as well as the Renovation Wave's objectives. Deep renovation is understood as a refurbishment leading to at least 60% energy savings²⁸. In the Renovation Wave strategy, the Commission sets the goal to substantially increase the rate of deep renovations in the EU by 2030, hence the CEEAG cannot allow for public support to be granted according to such a low threshold which does not lead to substantial energy savings and contradicts the Union's priorities. Therefore, the guidelines must be aligned with the higher ambition and integrate, as a minimum, the 60% energy savings threshold.

As in the rest of the draft CEEAG, the dedicated chapter lacks a strong reference to energy efficiency first principle. The energy efficiency first principle implies that a strong reduction of the energy demand is a prerequisite for any successful energy transition, and the building sector can save roughly two-thirds of its current energy demand by 2050²⁹.

Regarding new buildings, considering that most national NZEB definitions are unambitious (i.e. the COM 2020 progress assessment report shows that NZEB primary energy values for most Member States have less demanding requirements than the benchmarks recommended by the Commission in both residential and non-residential buildings), the at least 10% primary energy savings requirements is too low to ensure that state aid fosters the construction of those buildings that have the highest performance. Besides, what is key is to clarify the relationship between the CEEAG and the upcoming revision of the EPBD, where the NZEB requirements are expected to be updated. A dynamic cross reference is needed here.

²⁸ https://caneurope.org/energy_transition_buildings_factsheet/

²⁹ <https://caneurope.org/building-a-paris-agreement-compatible-pac-energy-scenario/>

Given the complexity and long duration of construction/renovation projects, limiting the possibility to grant state aid only to those that have been implemented and finalised at least 18 months before the entry into force of a Union standard risks leaving out many projects that would have an important role in improving the overall performance of the building sector.

5- Aid for district heating and cooling

The definition of energy efficient district heating and cooling in the draft CEEAG is linked to the EED 2012/27 Art. 2 (41 &42) which promotes cogeneration often operated on fossil fuels. The definition for efficient district heating and cooling and the methodology for determining the efficiency of the cogeneration process are meant to be updated through the legislative process that has just started with the publication of the Commission's proposal on the Energy Efficiency Directive (EED) revision in July 2021. The CEEAG must ensure coherence with the legislation under European Green Deal, and not be based on outdated provisions that do not ensure the achievement of the EU climate and energy commitments. **It needs to be ensured that state aid is not being granted to installations with greenhouse gas emissions that are unlikely to remain compatible with the EU's trajectory towards climate neutrality.**

The Commission considers that the upgrade or construction of district heating and cooling systems which rely on the most polluting fossil fuels such as coal, lignite, oil and diesel, have negative consequences on competition and trade which are unlikely to be offset unless certain conditions are fulfilled. One of those conditions, paragraph 347 (d), asks 'a clear timeline involving firm commitments for transitioning away from the most polluting fossil fuels, compatible with the Union's 2030 climate target and the 2050 climate neutrality target'. This is unclear and not binding, and leaves a door open for fossil gas by demanding a timeline to phase out only the energy sources which are defined as the most polluting.

The same way as in the energy infrastructure section, new investments in fossil gas for the construction or upgrade of district heating and cooling are considered to have positive environmental effects should the Member States explain how the measure will help achieve 2030 and 2050 climate targets, and avoid lock-in to gas infrastructure and equipment. Fossil gas investments are not compatible with the Union's 2050 climate neutrality commitment. Moreover, the dedicated chapter gives the example of aid beneficiary's commitment to binding targets to implement CCS/CCU, substitute fossil gas by renewable or low-carbon gases or close on a timeline consistent with the Union's climate targets, as a justified way of avoiding lock-in effect. This is problematic because mainly it is far from incentivising renewable energy sources for district heating, while putting them on equal footing with unproven technologies that are not suitable for this type of commitment. Given the fact that

share of non-biomass renewable energy sources in district heating systems is very low at the moment - lower than 10% in the EU³⁰, CEEAG must provide incentives to increase the percentage of already existing clean and competitive renewable energy sources in district heating. It is welcome that the guidelines refer to the waste hierarchy principle, however this reference doesn't provide sufficient safeguards against waste incineration being prioritised over reuse, recycling and other sustainable waste treatment - leading to a risk not only of high greenhouse gas emissions, but also other pollutants harmful to the atmosphere and environment.

³⁰ <https://www.iea.org/data-and-statistics/charts/district-heat-sales-in-europe-by-fuel-source-2000-2019>