

## **Public consultation on the revised Climate, Energy and Environmental Aid Guidelines (CEEAG) – response by RWE**

RWE welcomes the possibility to comment on the draft state aid guidelines for climate, environment and energy. The guidelines are an important tool to facilitate the European Green Deal and the decarbonization of the European Union. Overall, the European Commission acknowledges the enormous challenge of the Fit for 55 package with the draft. Realising the ambitious objectives of the EU climate policy requires unprecedented challenges for Member States and in particular for the energy industry given the amount of investments needed. To avoid unwanted competitive distortions, it is of paramount importance for all stakeholder that the guidelines create a framework of legal certainty, can act as enabler of the conversion and not as its inhibitor.

RWE welcomes the drafted guidelines in general but sees some room for improvement in specific cases:

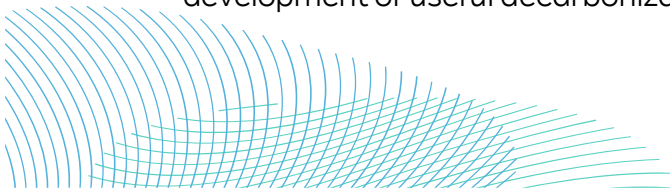
### **4.1 Aid for the reduction and removal of greenhouse gas (GHG) emissions including through support for renewable energy**

#### **Strengthen the possibility of specific support for hydrogen and its derivatives:**

Due to their importance to achieve GHG emission reduction targets in specific sectors and since hydrogen is already acknowledged as one of the main pillars for the energy transition, hydrogen and its derivatives should be explicitly mentioned in point 74 as renewables are. This would make obsolete the need for member state to provide evidence that eligible sectors or innovative technologies have the potential to make an important contribution to environmental protection and deep decarbonisation – points 82, 83, 90.

**Proportionality (point 90):** the possibility to limit bidding process to one or more specific categories of beneficiary to reflect deviation in the level of support or to avoid suboptimal results effectively takes in to account sector specific carbon avoidance costs. Therefore, this is to be welcomed to accelerate decarbonisation in a broad range of sectors, including support for hydrogen via sector-specific CCfDs.

**CfDs :** The revised guidelines allow aid covering mainly operational expenses only if the Member State demonstrates that this leads to more environmentally friendly solutions than CapEx aid. This provision should be dropped. Especially for the decarbonization of industry, the abatement costs are very high and cannot be brought down to a competitive level with CapEx aid only. Thus, an obligation to prove this in every single case will lead to over bureaucratization and harm the development of useful decarbonization tools.

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**Undersubscription of auctions:** The draft guidelines acknowledge undersubscriptions of auctions but want Member States to act on this. However, RWE sees the need for tolerance in this regard as these undersubscriptions could likely serve as incentives. Back and forth on auctions volumes would not be helpful to bring confidence in the market and would also not help reaching the renewables targets. Instead, Member States must rather enable projects by a framework that allows them to be developed for auctions.

**Price based vs. qualitative factors for auction criteria:** Basically, a price based approach should be the model of choice as renewables auction evaluation criteria as these ensure a level-playing field in terms of competition and that the lowest possible prices are achieved. Relying on qualitative criteria in return could lead to projects not realising the lowest possible prices and if not designed properly could lead to auctions participants being disadvantaged over others. Qualitative criteria can have a purpose if governments want to reward certain aspects of projects (i.e. using the most modern technologies or rewarding sustainable approaches or demonstration projects) or if markets have not yet been established. However, if qualitative factors are employed it is paramount that requirements and their evaluation are fully transparent to all participants and do not discriminate. Any ambiguity or arbitrary in these criteria can also jeopardise trust in the process. Finally, if qualitative factors are employed they should not exceed the 25% threshold (as proposed) as otherwise this would significantly distort possible price differences in the bids.

**General price caps and price caps per technologies in joint auctions:**

Generally, price caps are not needed in a healthy and competitive market, as a competitive price based auction will always yield the lowest possible prices. Rather than setting technology price caps in neutral auctions a mix of technology specific and technology neutral auctions should be employed. The technology-specific auctions should form the base of the targeted auction volumes and the technology-neutral auctions the “top-up”.

This has many advantages: The technology-specific components will give Member States the ability to steer the deployment of RES in regards to their different capabilities (i.e. what natural conditions they need in order to generate electricity) as well as providing predictability for industry on the supply-chain development by providing clear milestones. Technology-neutral auctions could provide further efficiency gains on top of the specific build-out.

Employing technology-price caps to enable this mix would lead to a sub-optimal scenario where Member States would decide how much they are willing to pay for each technology without having in-depth information on pricing capabilities. This could lead to inefficiencies. Additionally, price caps will not be able to avoid trade-offs in terms of getting the RES projects for the cheapest possible price.

**Negative prices (point 104):** Given the current legislation e.g. in Germany or France, renewables should be compensated for at least several hours during times of negative prices. In order to address the problem of negative prices in the

electricity markets, planers should focus on fostering new investments that provide flexibility and establish alternative market products. Rather than penalizing renewables, there should be incentives. In general, the definition of negative prices and whether approaches like in Germany or France will be tolerated under the future guidelines, is unclear from the draft.

**Awarding aid without auctions (point 93):** The Commission has to ensure, that Member States cannot award aid with a bias towards national developers.

**Support for new gas investments:** As investments in new gas infrastructure or projects might be needed to ensure security of supply, RWE explicitly welcomes point 110. As the investments might not be able to be financed via the electricity only-market, state aid should be allowed if conditions described under point 110 are met. Nevertheless, it has to be kept in mind that GHG emissions are already effectively been regulated by the European Emission Trading Scheme.

#### **4.7 / 4.11 Aid in the form of reduction in taxes or parafiscal levies / Aid in the form of reductions from electricity levies for energy-intensive**

Criteria for undertakings to be eligible for this kind of aid have been modified from electro-intensity  $\geq 20\%$  and trade intensity  $\geq 4\%$  (para. 186 EEAG 2014) to electro-intensity  $\geq 10\%$  and trade intensity  $\geq 20\%$ , or electro-intensity  $\geq 7\%$  and trade intensity  $\geq 80\%$  (para. 357 draft EEAG 2021). With these thresholds, industrial gases such as hydrogen would not be eligible for the reduction of electricity levies. In addition, the minimum own contribution has been raised from 15 % to 25 % (point 359). The change of the thresholds and the minimum own contribution is not reasonable, given the challenge of decarbonising industry, while maintaining its competitiveness. Thus, the existing thresholds and the minimum own contribution of 15% should be maintained. In any case, it must be ensured that water electrolysis, which is strongly supported by EU climate protection efforts, is able to benefit from the possibility of levy reduction and from the existing minimum own contribution of 15%. Otherwise, this would significantly increase the costs of green hydrogen production and thus lead to an increased need for subsidies. In view of the urgently needed market ramp-up to support decarbonization, this must be avoided.

#### **4.8 Aid for the security of electricity supply**

In principle, the draft guidelines want to create high hurdles to introduce capacity mechanisms. They are characterised as a measure of last resort and Member States have to prove in many ways that security of supply cannot be achieved via other measures. This approach is not appropriate, given the big challenges deriving from the decarbonisation of the electricity system. Capacity markets are already applied in many Member States and will be necessary across the EU for many years. This should be taken into account by the guidelines.

Specifically, the provisions on gas (point 326) should be changed. New investments in gas-fired power stations should not need to prove how they contribute to the climate targets. The EU already has other instruments (e.g. ETS) in place to consider its climate targets. In addition, an emissions threshold for capacity mechanisms is already in place in the electricity market regulation. In practice, it will be impossible for power plant operators to make binding commitments how to use hydrogen or CCS in the future, as this heavily depends on the framework provided by the Member State. Instead, newly-built plants for capacity market could prove that they are hydrogen-ready.

#### **4.9 Aid for energy infrastructure**

The operation of grid infrastructure is normally financed through grid fees and therefore does not constitute aid. In the case of hydrogen infrastructure operation, however, cost-covering H2 grid fees would be prohibitively high, at least in the ramp-up phase, and would thus prevent the hydrogen ramp-up. In order to ensure the operation of hydrogen infrastructure also in the market ramp-up phase, state subsidies to relieve the H2 grid fees should therefore also be possible. The State Aid Guidelines should therefore clarify that aid for operational costs is not excluded. If there is a single grid fee for hydrogen and gas networks (e.g. to avoid prohibitively high cost for hydrogen) this should not be considered state aid or unjustified cross subsidization.

#### **4.12 Aid for coal, peat and oil shale closure**

RWE welcomes the distinction between the market exits of profitable coal, peat and oil shale activities and the liquidation of uneconomic power plants. However, important questions remain open or should be reflected more specifically:

**Additional costs:** First and foremost, we would like to emphasize that early closures of profitable lignite activities incur significant amounts of additional costs, inter alia if open cast mines are affected. The closure process obviously requires sufficient lead time in each case and incurs exceptional environmental and social costs but also costs for adapted regional planning and approval procedures as well as subsequent re-cultivation and aftercare of open-pit mines.

**Definition of profitability:** While section 4.12.1. sets out the details for compensation payments for profitable units are compatible with the state aid guidelines, it leaves several questions to be answered: What is meant by “profitable” in terms of the regulation? Are all types of costs covered including costs of capital? Does it mean the unit has to be cash positive? How can it be distinguished compared to the alternative early closure of uncompetitive coal etc.? In our view, a business should always be considered profitable if its continuation is economically more beneficial than its termination. For in this case, in the case of a state-initiated early closure, in addition to the additional costs of

the early closure, the lost profits or lost contribution margins must also be reimbursed.

**Time of compensation payment:** Section 4.12.1.3 states, that a plant shall close no later than one year after the compensation payment and that otherwise a correction mechanism shall be implemented. However, costs for redesigning open cast mines as well as costs for structural changes occur before and after the closure of the plant itself. Thus, linear payouts of compensation are better suited for lignite power plants, than one-off payments. RWE understands that the purpose of a correction mechanism is to prevent overcompensation and RWE supports this objective as well. A correction mechanism is in RWE's view not the only possible mechanism to avoid overcompensation. In fact, at least in the lignite sector, such a mechanism is not a suitable instrument. A correction mechanism would lead to great uncertainty for the companies. In the lignite sector, long-term planning and obligations are at issue. The obligations for recultivation will still exist in decades. The draft guidelines rightly recognise that it is a legitimate concern of the Member States to make the phase-out process plannable and legally secure for all market participants, which is also in the interest of efficient climate protection. This is precisely the aim of securing the legal phase-out through contractual agreements. However, companies cannot conclude a contract under public law (and waive legal remedies) if compensation is conditional for decades.

RWE suggests that the correction mechanism is mentioned as one but not the only possibility to avoid overcompensation.