

Comments to the CEEAG proposal

09/07/2021

Point 65	
Modification	<p>65. State aid for environmental and energy objectives may have the unintended effect of undermining market rewards to the most efficient, innovative producers as well as incentives for the least efficient ones to improve, restructure or exit the market. This may also result in inefficient barriers to the entry of more efficient or innovative potential competitors. In the long term, such distortions may stifle innovation, efficiency and the adoption of cleaner technologies. These distortive effects can be particularly important when the aid is granted to projects that provide a limited transitory benefit but lock out cleaner technologies for a longer term, including those necessary to achieve the medium-term and long-term climate targets enshrined under the European Climate Law. This can, for example, be the case for support to certain activities using fossil fuels that provide an immediate reduction of green house gas emissions, but lead to slower emissions reductions in the long term. All other things being equal, the closer the aided investment is in time to the relevant target date, and the longer its economic lifespan, the greater the likelihood that its transitory benefits may be outweighed by the possible disincentives for cleaner technologies. The Commission will therefore take into account these possible short and long term negative effects on competition and trade in its assessment.</p>
Justification	<p>For transitory measures, the weighting of the shorter-term GHG reduction benefits against the longer-term carbon lock-in effect must consider not only how close in time the relevant target date is when granting the aid, but also the economic lifespan:</p> <ul style="list-style-type: none"> • The longer the economic lifespan of a transitory measure, the greater its negative effect in the longer-term. • Hence, a transitory measure with a long economic lifespan is more likely to deliver a negative weighting. <p>In addition, the longer the lifespan, the stricter the binding commitments to be required to the Member State / beneficiary in order to render the measure compatible. In this sense, see the proposed modification to point 108.</p>

Point 69	
Modification	<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 competition and trade, the Commission may shall 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 efficient achievement of climate objectives set under EU law ⁵¹. <u>The Commission shall consider relevant those measures (a) whose basic aim is not the promotion of renewable energy or energy efficiency and (b.1) that are individually large or (b.2) are small but are expected to be reproduced extensively becoming large when considered in an aggregated manner.</u></p> <p>⁵¹ This could also be is also the case where the aid distorts the operation of economic instruments put in place to internalise such negative externalities (for example, by affecting price signals given by the Union ETS or a similar instrument).</p>

Justification	<p>The consideration of the negative externalities should not be a possibility for the Commission, but an integral part of the assessment of the negative effects on competition and trade.</p> <p>The analysis of the negative externalities should look at whether they hinder the achievement of the climate objectives, but also at whether they hinder the efficiency of such achievement on a EU-wide level (i.e. impact on the internal market). In this sense, it is important to consider that the EU has put in place tools to achieve an EU-wide efficient decarbonisation, with the EU ETS having a central role.</p> <p>Finally, it is necessary to define in which cases it would be relevant to take into account the negative externalities as part of the assessment of the effects on competition and trade. In this sense:</p> <ul style="list-style-type: none"> • The negative effects of measures whose basic aim is the promotion of renewable energy or energy efficiency would not be relevant (i.e. these measures are needed to achieve for the EU objectives for renewable energy and energy efficiency). • The negative externalities due to large individual measures (i.e. representing a significant carbon abatement) should be taken into account. <p>The negative externalities due to small individual measures should not be taken into account, unless the aggregation of all expected similar individual measures results in a large virtual measure.</p>
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Point 54 and 96

Modification	<p>54. <u>Except in the case of quotas or supply obligations</u>, Aid may be awarded concurrently under several aid schemes or cumulated with ad hoc or de minimis aid in relation to the same eligible costs, provided that the total amount of aid for an activity or project does not lead to overcompensation or exceed the maximum aid amount allowed under these guidelines. If the Member State allows aid under one measure to be cumulated with aid under other measures, then it must specify, for each measure, the method used for ensuring compliance with the conditions set out in this point.</p> <p>-----</p> <p>96. When aid is granted in the form of operating aid or a tax reduction to support biofuels, bioliquids or biogas, and there is a quota or supply obligation which effectively sets a separate market price for biofuels, <u>bioliquids, biogas or biomass fuels, as well as for renewable fuels of non-biological origin and recycled carbon fuels, the aid amount must not exceed the difference between their production costs and that market price. Production costs may include a reasonable profit</u> no aid can be granted regardless how it is designed.</p>
Justification	<p>According to the incentive effect criterion, the aid to be compatible must change the behavior of undertakings, as described in section 3.1.2. In this sense, it is totally unclear how an aid can change such behavior when a quota or supply obligation has been introduced (either by the EU or national regulations):</p> <ul style="list-style-type: none"> • When there is a quota or supply obligation on a product, the market price of that product reflects the marginal cost of producing it to an amount enough to satisfy the quota or obligation. Thus, if in addition an operating aid or tax reduction is also granted, the market price of the product would decrease accordingly. • Therefore, the aid would only entail a redistribution of financial efforts between the suppliers / consumers obliged and whoever is financing the aid (e.g. taxpayers) – i.e. no additional incentive effect. • Furthermore, the buyout or penalty price that according to point 94(b) must be part of the competitive certificates or supplier obligation scheme, would have to be reduced accordingly to avoid excessive compensation. This would erode the effectiveness of the quota or supply obligation – i.e. lower incentive for suppliers / consumers to fulfil the obligation. <p>In the case of renewable electricity, a quota or supply obligation is very unlikely to set a separate price for it (i.e. renewable electricity is a very liquid market). In any case, any quota or supply obligation should be fulfilled with unsubsidized energy.</p>

Point 76

Modification	76. Support for biofuels, bioliquids, biogas and biomass fuels, <u>as well as for renewable fuels of non-biological origin and recycled carbon fuels</u> , 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.
Justification	REDII establishes clear sustainability and minimum GHG savings criteria to make sure that the net environmental impact of the fuels in question is sufficiently high. Hence, it makes sense to assume as a basic balancing criterion for State aid to require these fuels to fulfil at least the corresponding sustainability and minimum GHG savings. This is in fact what the EC proposes in this paragraph. However, (a) REDII establishes sustainability and GHG savings criteria not only for biofuels, bioliquids, biogas and biomass fuels, but also for RFNBOs and RDFs, and (b) the rationale for RFNBOs and RDFs is exactly the same (i.e. to make sure that the net environmental impact is sufficiently high). Therefore, RFNBOs and RCFs should also be included in this paragraph.

Point 79

Modification	79. Member States should demonstrate that aid is needed for the proposed activities as required under point 37, taking into account relevant costs and revenues including those linked to the ETS and related policies and measures identified in point 78. <u>In this sense, when the aid is not granted under a competitive bidding process it must be appropriately consider the cost savings linked to the ETS when carrying out the assessment described in paragraph 51.</u> Where the Member State demonstrates that there is a need for aid, then the Commission presumes that a residual market failure remains, which can be addressed through aid for decarbonisation, unless it has evidence to the contrary.
Justification	This modification refers to the case in which the aid for decarbonisation is not granted by means of a competitive bidding process and the counterfactual scenario is simply that the beneficiary continues its business without changes (e.g. no investment in CCS/CCU). In this case, the funding gap is estimated as the negative NPV corresponding to the factual scenario – see paragraph 51. While this approach is basically correct, it should be made clear that this NPV should incorporate as a revenue the cost savings due to the avoided emissions (i.e. the cost of the EUAs that the beneficiary will not have to surrender anymore once the decarbonisation measure is in place).

Point 92

Modification	<p>92. Exceptions from the requirement to allocate aid and determine the aid level through a competitive bidding process can be justified where evidence, including that gathered in the public consultation, is provided that one of the following applies:</p> <ul style="list-style-type: none"> (a) there is insufficient potential supply to ensure competition; in that case, the Member State must demonstrate that it is not possible to increase competition by reducing the budget or expanding the eligibility of the scheme; (b) beneficiaries are small projects, defined as follows: <ul style="list-style-type: none"> (i) for electricity generation or storage projects – projects below the threshold in Article 5 of Regulation (EU) 2019/943; (ii) for electricity consumption – projects with a maximum demand less than 400kW <u>and less than 200 kW from 1 January 2026;</u> (iii) for heat generation and gas production technologies – projects below 400kW installed capacity <u>and less than 200 kW from 1 January 2026.</u>
Justification	<p>For electricity generation, Article 5 Regulation (EU) 2019/943 establish the following thresholds:</p> <p><i>2. Member States may provide derogations from balance responsibility only for:</i></p> <p><i>(b) power-generating facilities using renewable energy sources with an installed electricity capacity of less than 400 kW</i></p> <p><i>4. For power-generating facilities commissioned from 1 January 2026, point (b) of paragraph 2 shall apply only to generating installations using renewable energy sources with an installed electricity capacity of less than 200 kW.</i></p> <p>Same limits should apply to all technologies for the sake of a level playing field in the context of the Energy System Integration (i.e. allow for a fair competition between all energy carriers).</p>

Point 93

Modification	<p>93. For an individual aid award without a competitive bidding process, Member States must justify the proposed aid levels based on an individual business plan for the specific project to be aided, including all the elements listed in points 50 and 51. In addition, <u>where the funding gap analysis is subject to significant uncertainties, including the future production or utilization level or the value of EUAs in the ETS, the Member State must conduct an ex post monitoring to verify the assumptions made about the level of aid required and put in place a claw-back mechanism, as set out in point 53.</u></p>
Justification	<p>It is important to consider that:</p> <ul style="list-style-type: none"> a) The funding gap analysis (specially of nascent decarbonisation technologies / alternatives) is subject to significant uncertainties. b) The funding gap commonly depends on variables that are very hard to forecast / are subject to significant estimation error (e.g. future price of EUAs, utilization / production level, etc.). c) In addition, there is a clear information asymmetry between the Member States / Commission and the project developers. <p>In order to avoid excessive compensation due to any of the issues mentioned (uncertainty, estimation error, information asymmetry), claw-back mechanisms as those described in point 53 must be put in place.</p>

Point 103

Modification	103. Aid for decarbonisation can take a variety of forms including up front grants and contracts for ongoing aid payments such as contracts for difference ⁶¹ . Aid which covers costs mostly linked to operation rather than investment should only be used where the Member State clearly demonstrates that this results in more environmentally friendly operating decisions <u>leading to overall greenhouse gas emissions reductions</u> .
Justification	It is necessary to introduce a criterion to define what is meant by “ <i>more environmentally friendly operating decisions</i> ”. In this sense, the more friendly decisions are those that lead to an overall reduction of GHG as opposed to an individual reduction (e.g. see the case of CHPs where an increase in production does not necessarily lead to a reduction in GHG emissions system-wide).

Point 106

Modification	106. For instance, w Where the infrastructure initially connects only a limited number of users, the distortive effect can must be mitigated where it is part of a plan to develop a wider Union network on the basis of the following <u>cumulative</u> criteria: <ul style="list-style-type: none"> (a) the accounting for the infrastructure should be separated from any other activity and costs of access and usage made transparent; (b) unless this undermines the attainment of <u>the decarbonisation or renewable energy deployment linked to</u> the objective of the aid, aid should be subject to the opening up of the infrastructure to third parties, <u>especially energy producers</u>, at fair, reasonable and non-discriminatory terms (including public calls for connection requests at equivalent conditions); (c) the advantage that the beneficiaries derive until such wider development occurs may need to be offset, for instance by way of contributing to the further extension of the network; (d) the advantage derived by the dedicated users may need to be limited and/or shared with other players.
Justification	Access to infrastructures is the basis for competition – this is in fact one of the reasons why infrastructures are regulated under TPA arrangements. In this sense, aid for dedicated infrastructures cannot turn into a barrier to an effective competition: a more assertive approach is needed in this paragraph: <ul style="list-style-type: none"> • All the criteria listed must be strictly fulfilled. • It is important that dedicated infrastructures are in any case opened to third parties, especially those that are clean energy producers: dedicated infrastructures must not turn into a barrier for supply-side competition. • In any case, such third-party access cannot undermine the decarbonisation / RES deployment that is link to the objective of the aid (i.e. strictly speaking, the objective of the aid is not decarbonisation / RES deployment itself but to incentivize the development of a certain economic activity).

Point 108

Modification	<p>108. Aid for decarbonisation may unduly distort competition where it displaces investments into cleaner alternatives, <u>including more energy efficient alternatives</u>, that are already available on the market, or where it locks in certain technologies, hampering the wider development of a market for and the use of cleaner solutions. The Commission will therefore also verify that the aid measure does not stimulate or prolong the consumption of fossil-based fuels and energy⁶³, thereby hampering the development of cleaner alternatives and significantly reducing the overall environmental benefit of the investment. Member States should explain how they intend to avoid that risk, including by way of binding commitments to use mainly renewable or low carbon fuels or phase out fossil fuel sources <u>or undertake decommissioning under a predefined timescale. These binding commitments must be:</u></p> <p><u>(a) clearly and transparently defined;</u></p> <p><u>(b) consistent with the progressive achievement of the 2030 and 2050 goals, in line with the criterion defined in paragraph 65; and</u></p> <p><u>(c) assumed by the beneficiary and its legal successors, who must be clearly identified and reported by the Member State to the Commission.</u></p> <p><u>The fulfilment of the binding commitments must be duly reported by the beneficiary or its successor to the Member State and Commission. In case the binding commitments are not timely fulfilled, the Member State must proceed to (a) cancel the aid, (b) in its case, recover the amounts so far granted, and (c) forbid the operation of the installation in question should it no create an irremediable concern for the energy system, including threatening security of supply, or the economic activity of an end consumer.</u></p>
Justification	<p>Two issues to be highlighted:</p> <ul style="list-style-type: none"> First, decarbonisation is about using cleaner alternatives, but also more energy efficient alternatives. This is important in the context of energy system integration in which competition between energy carriers is possible – e.g. competition between direct electrification and other alternatives, including indirect electrification. Second, it is necessary to require a clear definition of the commitments and the responsible party, a monitoring / reporting process and the consequences of not fulfilling them, which should introduce significant disincentives. <p>Paragraph 110 should be modified similarly.</p>

Point 116

Modification	<p>116. This aid may be combined with aid for any or all of the following measures:</p> <ul style="list-style-type: none"> (a) the installation of integrated on-site renewable energy installations generating electricity, heat or cold; (b) the installation of equipment for the storage of the energy generated by on-site renewable energy installations, <u>provided that the Member State demonstrates that this is the most efficient storage alternative energy system-wide;</u> (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; (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; (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
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Justification	<p>Technology neutrality and level playing field are basic principles to ensure a well-functioning market, and even more in the new context of the energy system integration.</p> <p>State aid should not be implicitly used to select “winners”, especially when different alternatives / solutions are available in the market. Such behavior would be in fact contrary to the proportionality criterion.</p> <p>In addition, respecting these principles are also basic to avoid significant negative effects on competition and trade, which – together with the proportionality issue – would render the measure contrary to the common interest and, thus, incompatible.</p>
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Point 321

Modification	<p>321. For strategic reserves and any other measures where capacity is held outside the market, to ensure market price formation is not distorted the following additional cumulative requirements apply:</p> <ol style="list-style-type: none"> the resources of the measure are to be dispatched only if the transmission system operators are likely to exhaust their balancing resources to establish an equilibrium between demand and supply¹¹¹; during imbalance settlement periods where resources in the measure are dispatched, imbalances in the market are to be settled at least at the value of lost load¹¹² or at a higher value than the intraday technical price limit¹¹³, whichever is higher; the output of the measure following dispatch is to be attributed to balance responsible parties through the imbalance settlement mechanism; the resources in the measure are to be held outside the energy markets for at least the duration of the contractual period cannot return to the market even when the contractual period ends; <u>the duration of the contractual period cannot go beyond one year.</u>
Justification	<p>Strategic reserves and network reserves are considered transitory solutions while the market undertakes the reforms needed to tackle the security of supply issues identified. In this sense, its basic aim is to avoid the decommissioning of certain generation capacities in the meantime – i.e. very different from promoting the investment in new generation capacities.</p> <p>According to this, these measures should not distort the price formation, but also the entry / exit of capacities to the market. To do end, it is necessary to:</p> <ul style="list-style-type: none"> Make clear that capacities contracted by the reserve cannot return to the market even after the reserve contract ends. Otherwise, the reserve could be used as an opportunistic solution for “temporary” profitability issues – i.e. distortion of the market-based signals for mothballing / decommissioning. Limit the duration of contracts to one year. Otherwise, longer-term contracts could incentivize the entry of new generation capacity, thus leading to a system in practice similar an auction for new capacities only.

Point 323

Modification	<p>323. Security of electricity supply measures should not:</p> <ol style="list-style-type: none"> create undue market distortions nor limit cross-zonal trade; reduce incentives to invest in <u>an efficient level of</u> interconnection capacity – for example by <u>unduly</u> reducing congestion revenue for existing or new interconnectors; undermine market coupling, including intra-day and balancing markets; undermine investment decisions on capacity which preceded the measure.
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Justification	<p>Security of electricity supply measures are needed because of market failures that lead to a level of reliability lower than efficient, which in turn lead to more-frequent-than-efficient high-priced scarcity events. This means that the congestion rent is higher than efficient.</p> <p>Capacity mechanisms ensures that the capacity available in the market provides an efficient level of reliability, thus bringing the frequency of the high-priced scarcity events to its efficient level. This means that the congestion rent is also brought to its efficient level.</p> <p>In other words, in an electricity system subject to adequacy issues, more-frequent-than-efficient high-priced scarcity events produce higher-than-efficient congestion, thus creating an incentive to overinvest in interconnection capacity. A capacity mechanism corrects this situation.</p>
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Point 332

Modification	<p>332. The Commission considers that a legal monopoly which excludes distortions of competition exists where the following cumulative conditions are met:</p> <ol style="list-style-type: none"> the construction and operation of the infrastructure is subject to a legal monopoly established in compliance with Union law; this is the case where the TSO/DSO is legally the only entity entitled to make a certain type of investment and no other entity can operate an alternative network ¹¹⁴; the legal monopoly not only excludes competition on the market, but also for the market, in that it excludes any possible competition to become the exclusive operator of the infrastructure in question; the service is not in competition with other services, <u>especially considering the new context brought by the energy system integration and the new possibilities for substitutability</u>; if the operator of the energy infrastructure is active in another (geographical or product) market that is <u>either regulated or open to competition</u>, cross-subsidisation is excluded; this requires that separate accounts are used, costs and revenues are allocated in an appropriate way and public funding provided for the service subject to the legal monopoly cannot benefit other activities. As regards electricity and gas infrastructure, as Articles 31 of respectively both Directive 2009/72/EC of the European Parliament and of the Council and Directive 2009/73/EC of the European Parliament and of the Council require vertically integrated entities to keep separate accounts for each of their activities, this requirement will in all likelihood be satisfied <u>for electricity and gas</u>.
Justification	<p>Energy System Integration (ESI) directly refers to the substitutability of different energy carriers:</p> <ul style="list-style-type: none"> Sectors are not anymore bound to specific energy carriers (e.g. there are now alternatives for fossil fuels in road transport, residential heating, etc.). It is possible to convert one energy carrier into another (e.g. power-to-gas, gas-to-power). <p>ESI is key for achieving the EU's climate and environmental goals and in an efficient manner. Therefore, measures that hinder the development of the ESI are negative for EU's climate and environmental goals. Infrastructures are at the heart of the ESI as substitutability between energy carriers also includes their infrastructures, even when arranged as traditional "natural monopolies" as in the case of electricity, gas or (potentially in the future) hydrogen. For instance, in order to integrate RES-E it would be possible to either invest in the electricity network or in the gas/hydrogen network together with power-to-gas. This substitutability is even clearer in the case of electricity vis-a-vis gas/hydrogen storage as they compete for the provision of the same services in an integrated energy system (e.g. avoid RES-E curtailments). In addition, it would be possible to have a DSO/TSO operating the infrastructures corresponding to different energy carriers (e.g. gas and hydrogen). This would set a new context for cross-subsidization – i.e. not just between regulated and competitive activities (tackled through unbundling rules), but also between different regulated activities (e.g. users of gas infrastructures subsidizing users of hydrogen infrastructures). Therefore, the cumulative conditions to assess whether a natural monopoly excludes distortions on competition must include this ESI-related issues.</p>

Point 339

Modification	<p>339. Section 3.2.2. is not applicable to energy infrastructure. In analyzing the impact of State aid to energy infrastructure on competition, the Commission's approach will be as follows:</p> <p>(a) In view of the existing requirements under the internal energy market legislation, which are aimed at strengthening competition, the Commission will generally consider that aid for energy infrastructure subject to full internal market regulation does not have undue distortive effects, <u>unless that infrastructure has not been appropriately assessed under an energy system integration perspective.</u></p> <p>(b) For infrastructure projects which are exempted, in whole or in part, from internal energy market legislation, the Commission will carry out a case-by-case assessment of the potential distortions of competition taking into account, in particular, <u>the energy system integration</u>, the degree of third party access to the aided infrastructure, access to alternative infrastructure, crowding-out of private investment and the competitive position of the beneficiary or beneficiaries. For infrastructure exempted in whole from internal energy market legislation, the negative distortive effects on competition are considered particularly serious.</p> <p>(c) In addition to the approach above outlined, the Commission considers that for natural gas infrastructure investments, the positive effects on competition manifestly outweigh its negative effects on competition where the resulting infrastructure is fit for use for hydrogen and or renewable gases or fuels of nonbiological origin. <u>Furthermore, Member States must demonstrate that such infrastructure is basically needed for enabling well-identified renewable and low carbon energy producers to operate.</u> Where this is not the case, in order to off-set the negative effects on competition, the Member State concerned needs to demonstrate the following: (i) why it is not possible to design the project so that it is fit for use for hydrogen and or renewable gases or fuel of non-biological origin; (ii) why the project does not create a lock-in effect for the use of natural gas; and (iii) how the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target.</p> <p><u>(d) With regard to infrastructures fir for use of an admixture of gas and hydrogen, Member States must demonstrate (i) that such infrastructure is basically needed for enabling well-identified renewable and low carbon energy producers to operate; (ii) why the project does not create a lock-in effect for the use of natural gas; and (iii) how the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target.</u></p>
Justification	<p>Three issues to be highlighted:</p> <ul style="list-style-type: none"> • First, infrastructures are at the heart of the Energy System Integration, which is key for achieving the EU's climate and environmental goals and in an efficient manner, as substitutability between energy carriers also includes their infrastructures, even when arranged as traditional "natural monopolies" as in the case of electricity, gas or (potentially in the future) hydrogen (see comments to point 332). • Second, it is necessary to distinguish between aid for infrastructures for gas, for hydrogen and for an admixture of both. This is because this last option is clearly a transitory measure (see EC's Communication on a Hydrogen Strategy), that risks creating a carbon lock-in. Hence, a specific assessment should be required. • Third, Member States must demonstrate that the infrastructure is not to have a negative impact on EU's climate and environmental goals. This depends basically on the whether it will serve to enabling well-identified / realistic renewable and low carbon energy producers to operate.