RESPONSE TO THE EUROPEAN COMMISSIONS'S PUBLIC CONSULTATION ON THE REVISION OF THE STATE AID GUIDELINES

As part of the Green Deal and Europe's efforts to become the first climate neutral continent by 2050, Amprion appreciates the review of the Environmental and Energy State Aid Guidelines 2014-2020 ('EEAG') that should primarily aim at ensuring a flexible and fit-for-purpose framework to attract the investments needed for the decarbonisation process. It is crucial that this framework is updated in view of recent legislative, market and technology developments. However, it must be ensured that the decarbonisation objectives can be achieved without unduly affecting the secure operation of the interconnected grid.
Against this background, Amprion also fully supports ENTSO-E's consultation contribution.

KEY ISSUES

The Regulation (EU) 2019/943 sets out the precise conditions and design principles (Art. 21 to 27) under which capacity mechanism and capacity mechanism designed as strategic reserve can be implemented, including specific requirements on emission limits and technology neutrality.

The **requirements of the Climate, Energy and Environmental Aid Guideline (CEEAG)**, **in particular Chapter 4.8** "Aid for the Security of Electricity Supply", **can be critical for system security in case the existing reserve instruments fall under the requirement of state aid approval**. Due to the envisaged requirements of the CEEAG, **strategic reserves that are not capacity mechanisms must also fulfil the requirements** of the Regulation (EU) 2019/943 in future.

In this context, there are additional emission requirements for the network reserve in particular. If these emission limits were applied, the permissible operating hours per year and plant would be significantly limited. The resulting restrictions on the operating hours could hinder the sensible use of the German network reserve (Netzreserve). **It must be ensured that individual plants of the power plant reserves remain operational without further restrictions to ensure system security. The emission requirements should not be extended to strategic reserves which are not a capacity mechanism.** This also applies to other mechanisms, such as the German network reserve and "special network equipment" (besondere netztechnische Betriebsmittel, 'bnBm').

In principle, the requirements and provisions in the Regulation (EU) 2019/943 provide an appropriate and balanced framework. In order to remain consistent, the CEEAG should be adapted to the specifications, but should not exceed them.

CHAPTER 4.8 | AID FOR THE SECURITY OF ELECTRICITY SUPPLY

SCOPE:

According to point 285, the application of the guidelines is extended to cover interruptibility schemes and network reserves too, with the effect of enlarging the scope of application of the Regulation (EU) 2019/943 to measures other than capacity mechanisms. From our point of view such a result should not be achieved through a State Aid Guidelines revision. This expansion is critical, especially with regards to points 321 and 324 (described further below):

- **Point 18(47):** The draft CEEAG defines the term 'interruptibility scheme' for the first time. However, the proposed definition is not consistent with the nature of such services: interruptibility schemes in fact are aimed at guaranteeing the system security and not the security of supply and they are properly qualified as a defense system under the scope of the Regulation (EU) 2017/2196 establishing a network code on electricity emergency and restoration. Moreover, the definition proposed in the draft CEEAG is broader in scope than previous ones used in all forgoing state aid cases[1].
  Previously, the term was used much more narrowly, limiting it to demand side response. A broader definition of the term as proposed in the draft CEEAG would include *Special Network Operating Resources* used by Transmission System Operators (TSOs) to keep n-1 security in events of actual failures of operating resources. If, in addition, Article 22 of Regulation (EU) 2019/943 applied to interruptibility schemes, as

[1] State aid cases such as SA.43735 (related to interruptibility schemes in Germany) or SA.48780 (related to interruptibility schemes in Greece)

implied in point 325, it would impair TSOs' capability to maintain system security.
Considering that Amprion does not agree with the extension of the scope of the CEEAG to interruptibility schemes, Amprion recommends removing the definition 18(47) as it would be redundant in the CEEAG text. In any case, and for the sake of clarity and completeness, Amprion would like to remark that the correct definition of 'interruptibility scheme' should be the following, in line with the draft definition provided in the subsequent paragraph (see box).

'Interruptibility scheme' means a measure designed to contribute to defend the dynamic and static stability in the electricity system or address short term network security problems by interrupting load".

Furthermore, when considering the applicability of criteria used for assessing the compatibility of adequacy measures, the distinction between adequacy and congestion management measures should be respected.

Measures designed and implemented by TSOs are subject to a complex legal framework, and terms must be used precisely to cover the right measures within the scope of the respective regulatory requirements. In order to ensure regulatory coherence and certainty, we invite the Commission to reconsider the terminology used in the draft CEEAG, so that appropriate compatibility criteria can be applied to the respective measures where they are considered to constitute State aid.

- **Points 285, 325 and 18(47):** Measures designed not to address adequacy issues, but network congestions or emergency situations as network reserves and interruptibility schemes, should remain exempted from the application of these guidelines and references to those measures should be removed from the CEEAG.
- **Points 285, 321:** According to **point 285**, the CEEAG now also apply to network reserves.
  However, it is unclear whether bnBm are also covered by the definition of "interruptibility schemes", see **point 321 letter a)**.
  According to **point 321 letter b)**, the balancing energy price in the quarter hours in which a measure is activated should at least correspond to the maximum of the value of lost load ('VoLL') or the intraday price limit. This is appropriate with regard to load coverage for strategic reserves. However, to apply this price limit also to quarter hours in which the network reserve has been activated does not make sense, as the balancing responsible party cannot be obligated if they have to be activated for grid-related reasons. In the same sense, **point 321 letter c)** cannot be applied to the use of network reserves or bnBm, as these measures cannot be allocated to individual balancing responsible parties via the imbalance settlement mechanism.
- **Points 324:** The requirement regarding congestion management or emergency measures aiming at guaranteeing the security of the system is also not feasible to implement in practice. According to this requirement, those generators or consumers who cause the congestion would have to bear the costs of the measure. This would contradict the intention of the zonal market model, according to which generation and consumption are only allocated on the basis of their price bids without taking into account the network conditions. In fact, the market actors usually cannot know that they are causing a congestion due to the lack of knowledge of the network status. The proposed solution ("this may be achieved by allocating the costs of a security of supply measure to electricity consumers in periods of peak electricity demand") is only suitable for resource adequacy measures. However, it does not make sense in the area of congestion management or grid safety emergency measures, as those events can also occur under other circumstances (e.g. high wind and low electricity demand in Germany).

CO_2 EMISSION REQUIREMENTS:

- **Point 320 in conjunction with point 325:** The requirements of the guidelines to extend compliance with the emission limits according to Art. 22 of Regulation (EU) 2019/943 to network reserves and interruptibility schemes are very critical. In this context, there are additional emission requirements for both the German network reserve and the bnBm, which could restrict system security. If the emission requirements were applied, the permissible running times per year and plant would be limited for existing plants in the network reserve. The resulting restrictions on operating hours could hinder the sensible use of the network reserve. Furthermore, none of the bnBm currently under construction in Germany would comply with the emission value of 550g CO_2/kWh and thus would allow its use.
  It must be ensured that individual plants in the German network reserve also remain operational without further restrictions to ensure system security. The emission requirements should therefore not be extended beyond capacity mechanisms pursuant to Article 22 of Regulation (EU) 2019/943.

TRANSFERABILITY OF CRM OBLIGATIONS:

- **Point 322:** The inclusion of strategic reserves is not in line with Regulation (EU) 2019/943, where Article 22(3) explicitly exempts strategic reserves from the requirement that capacity obligations are transferable between eligible capacity providers. From a regulatory point of view, Regulation (EU) 2019/943 governs precisely under what conditions capacity mechanisms can be implemented, including specific requirements on the transferability of capacity obligations. Changes in the CEAAG should therefore be aligned with the Regulation (EU) 2019/943 to avoid legal ambiguities.

  Also from a market perspective, it is feasible to exclude "out-of-market mechanisms" from the scope of this requirement as foreseen in Regulation (EU) 2019/943, as the number of authorised market participants is too small to organise, e.g. a secondary market or other transferability mechanism for out-of-market capacity. In addition, there would be disproportionate operational complexity to implement a transfer mechanism. What is more, in the case of network reserves, the location of a plant is relevant, so that capacity obligations cannot be transferred arbitrarily with regards to the geographic location.

CHAPTER 4.11 | AID IN THE FORM OF REDUCTIONS FROM ELECTRICITY LEVIES FOR ENERGY-INTENSIVE USERS

- **Point 357:** According to point 357, aid should be limited to sectors that are at a significant competitive disadvantage due to the charges eligible for aid and run the risk of relocating outside the Union. In addition to the energy intensity, the system efficiency of companies should also be taken into account and a reduction in network charges and surcharges should also be possible for these companies or operators of storage facilities.

CHAPTER 4.12 | AID FOR COAL, PEAT AND OIL SHALE CLOSURE

The closure of the coal and oil power plants could induce constraints on the network. It shall continue to be possible for the TSOs to assess the relevance of the power plants for the operation of the system and held the power plant in a network reserve to ensure the secure operation of the grid if necessary.

CHAPTER 7 | APPLICABILITY

APPLICABILITY OF THE CEEAG:

- **Points 411, 413:** The EC will apply the rules from 1.1.2022, whereby the application according to point 413 should only apply to all notified aid in respect of which it is called upon to take a decision after that date. The German capacity reserve has already been approved beyond that date (until 30.9.2025), and the interruptible load in Germany (Ordinance on Interruptible Load Agreements (AbLaV)) has also already been approved (until 1.7.2022).
  In view of the applicability of the CEEAG, it should be ensured that the same implementation deadlines apply to the capacity mechanisms as those provided for in the Regulation (EU) 2019/943 and that no stricter deadlines are permitted.

ADJUSTMENTS TO NATIONAL ENVIRONMENTAL OR ENERGY AID SCHEMES:

- **Points 414(a) and 297 in conjunction with points 320 and 325:** In this context, it is critical to note that the CEEAG do not offer any grandfathering. According to points 414(a) and 297, Member States must bring their aid measures into line with the guidelines by 31.12.2023 and notify existing measures to the EC. This, in conjunction with the emission requirements in points 320 and 325, would prevent the use of bnBm currently under construction without granting them grandfathering as provided for in Article 22(5) of the Regulation (EU) 2019/943.