

## COMMENTS TO THE COMMUNICATION FROM THE COMMISSION ON Guidelines on State aid for climate, environmental protection and energy 2022

IBERDROLA appreciates this opportunity to provide comments to the Commission's CEEAG 2022 proposal. While it seems to be clear that this proposal would contribute to aligning State aid rules with the new reality imposed by the Union's objectives for 2030 and 2050, explicitly defined in the European Climate Law, the Renewable Energy Directive and the Energy Efficiency Directive, it is still necessary to further reflect on how to ensure that transitory measures present – and really deliver afterwards – a positive balance.

These comments are organised following the sections of the CEEAG proposal.

### ***Section 3.2 – Negative condition: the aid measure must not unduly affect trading conditions to an extent contrary to the common interest***

#### **Point 65**

##### **Modification proposed:**

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 greenhouse 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.

##### **Justification:**

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:

- 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.

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.

## Point 54 and 96

### Modification proposed:

54. Except in the case of quotas or supply obligations, 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.

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, 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 no aid can be granted regardless how it is designed.

### Justification:

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):

- 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.

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.

## Point 69

### Modification proposed:

69. In that balancing exercise, the Commission will pay particular attention to Article 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council<sup>50</sup>, 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 <sup>51</sup>. **The Commission shall consider relevant those measures (a) whose basic aim is not the promotion of renewable energy or energy efficiency and (b) that are individually large or are small but are expected to be reproduced extensively becoming large when considered in an aggregated manner.**

<sup>51</sup> 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).

### Justification:

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.

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.

Finally, it is necessary to define in which cases it would be relevant to consider the negative externalities as part of the assessment of the effects on competition and trade. In this sense:

- 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 considered.
- The negative externalities due to small individual measures should not be considered, unless the aggregation of all expected / potential similar small individual measures results in a large virtual measure with a significant negative externality.

## Section 4.1 – Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy

### Point 76

#### Modification proposed:

76. Support for biofuels, bioliquids, biogas and biomass fuels, **as well as for renewable fuels of non-biological origin and recycled carbon fuels**, can only be approved to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts.

#### 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 / positive. 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 RCFs, and (b) the rationale for RFNBOs and RCFs is exactly the same (i.e. to make sure that the **net environmental impact** is sufficiently high / positive). Therefore, RFNBOs and RCFs should also be included in this paragraph.

### Point 79

#### Modification proposed:

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. **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.** 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 proposed:

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:

- (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:
  - (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 **and less than 200 kW from 1 January 2026;**
  - (iii) for heat generation and gas production technologies – projects below 400kW installed capacity **and less than 200 kW from 1 January 2026.**

### Justification:

For electricity generation, Article 5 Regulation (EU) 2019/943 establish the following thresholds regarding balance responsibility:

*2. Member States may provide derogations from balance responsibility only for:*

*(b) power-generating facilities using renewable energy sources with an installed electricity capacity of less than **400 kW***

*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**.*

Article 12 establishes the same thresholds regarding dispatching of power-generating facilities.

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).

## Point 93

### Modification proposed:

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, 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.**

#### Justification:

It is important to consider that:

- 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.

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.

As a reference, see what is proposed in point 280 for “*aid in the form of environmental protection in the form of reductions in taxes or parafiscal levies*”.

### Point 103

#### Modification proposed:

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<sup>61</sup>. 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 **leading to overall greenhouse gas emissions reductions**.

#### Justification:

It is necessary to introduce a criterion to define what is meant by “*more environmentally friendly operating decisions*”. 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 104

#### Modification proposed:

104. The aid must be designed to prevent any undue distortion to the efficient functioning of markets and, in particular, preserve efficient operating incentives and price signals. For instance, beneficiaries should remain exposed to price variation and market risk, unless this undermines the attainment of the objective of the aid. In particular, beneficiaries should not be incentivised to offer their output below their marginal costs and must not

receive aid for production in any periods in which the market value of that production is negative, without prejudice to possibility to receive a financial compensation for the energy not produced during such periods. In any case, the Commission will monitor the functioning of the market to detect potential distortions in its functioning due to the aid that where not anticipated when the aid was approved. Under the Commission's request, the aid could be suspended for new installations until changes correcting for the distortion detected are introduced and approved by the Commission.

#### Justification:

Support for energy production at those periods in which it has a negative market value constitutes a clear market distortion that should be avoided for new installations. At the same, the future amount of renewable energy curtailments depends on factors out of investors' control, including e.g. the available interconnection capacity, storages and/or demand response. Hence, exposing investors to such curtailments constitutes an unproductive volume risk that the CEEAG must allow Member States tackle in an effective manner, in particular through a financial compensation for the energy not produced at those periods in which it has a negative market value. See as a reference the provisions in Article 13.7 Regulation 2019/943 regarding the compensation for renewable electricity curtailed due to redispatching. In addition, market functioning is becoming more and more complex making it very difficult to anticipate the effects of an aid. Therefore, the Commissions should monitor those effects and, should a distortion be detected, it should be able to suspend the aid and request (and ultimately approve) changes correcting for the distortion detected. Such changes should affect new installations only (i.e. grandfathering).

#### Point 106

#### Modification proposed:

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 **cumulative** criteria:
- (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 **the decarbonisation or renewable energy deployment linked to** the objective of the aid, aid should be subject to the opening up of the infrastructure to third parties, **especially energy producers**, 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:

- 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 proposed:**

108. Aid for decarbonisation may unduly distort competition where it displaces investments into cleaner alternatives, **including more energy efficient alternatives**, 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 energy<sup>63</sup>, 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 **or undertake decommissioning under a predefined timescale. These binding commitments must be:**

- (a) clearly and transparently defined;**
- (b) consistent with the progressive achievement of the 2030 and 2050 goals, in line with the criterion defined in paragraph 65; and**
- (c) assumed by the beneficiary and its legal successors, who must be clearly identified and reported by the Member State to the Commission.**

**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.**

**Justification:**

Two issues to be highlighted:

- 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. As a reference, see what is proposed in point 270 for “*aid in the form of reductions in environmental taxes and parafiscal levies*”.

Paragraph 110 should be modified similarly.

## Section 4.2 – Aid for the improvement of the energy and environmental performance of buildings

### Point 116

#### Modification proposed:

116. This aid may be combined with aid for any or all of the following measures:

- (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, **provided that the Member State demonstrates that this is the most efficient storage alternative energy system-wide;**
- (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

#### Justification:

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.

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.

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.

#### Point 134

##### Modification proposed:

134. Measures that incentivise new investments in natural gas-fired equipment aimed at improving the energy efficiency of buildings may lead to a reduction in energy demand in the short run but aggravate negative environmental externalities in the longer run, compared to alternative investments. Moreover, aid for the installation of natural gas-fired equipment may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market, or where it locks in certain technologies **and fossil-based energy**, hampering the wider development of a market for and the use of cleaner technologies. The Commission considers that the positive effects of measures that create such a lock-in effect are unlikely to outweigh their negative effects. **Furthermore, the Commission considers that if the deployment of natural gas-fired equipment is not accompanied by the substitution of natural gas by renewable and low carbon gas, then the negative effects outweigh the positive effects of the measure.** As part of its assessment, the Commission will consider whether the natural gas-fired equipment replaces energy equipment using the most polluting fossil fuels, such as oil and coal.

##### Justification:

Improvements in buildings based on the deployment of natural gas-fired equipment would be compatible with the UE's climate and environmental objectives only if they are part of a wider plan at Member State level to substitute natural gas by renewable and low carbon gas. Otherwise, the measure would lock-in the demand for fossil gas in the longer term.

### Section 4.3 – Aid for clean mobility

#### Point 162

##### Modification proposed:

162. Aid for the acquisition or leasing of CNG and LNG vehicles may be regarded as not creating long-term lock-in effects and not displacing investments into cleaner technologies if, at the moment when the Member State notifies the Commission of its plans to implement the aid measure or when the aid measure is implemented, the Member State demonstrates that cleaner alternatives are not readily available on the market and are not expected to be available in the short term<sup>71</sup>. The aid may also be regarded as not having lock-in effects or displacing investments into cleaner technologies where the Member State commits to ensure that those vehicles would be operated using blending of biogas or renewable gaseous transport fuels of non-biological origin (minimum **2050% and ready to operate at 100%**). **The Union database described in article 28 of Directive 2018/2001 shall be used to demonstrate such commitment, which must be carried out by an independent entity. In case the commitment is not fulfilled, the Member State shall immediately cease the aid scheme in question. Aid granted from the moment the commitment is not fulfilled will have to be recovered from the beneficiary.**

**Justification:**

With regarding to aid to vehicles using blends of biogas or renewable gaseous transport fuels of non-biological origin (RGTFNBOs):

- First, the aid does not have a lock-in effect or displaces investments into cleaner technologies if that blend is ambitious enough – i.e. at least 50%. In addition, the vehicle must be ready to use a 100% blend of biogas and RGTFNBOs in order to reduce its negative effects in the longer-term.
- Second, the Union database described in article 28 of Directive 2018/2001 shall be used to demonstrate the MS' commitment to use a minimum % in the blend. This is needed in order to make sure that the commitments are actually fulfilled (not just "greenwashing" based on e.g. non-robust enough Guarantees of Origin).
- Third, there must be a monitoring of the MS' commitment (i.e. an independent entity should act as auditor and report to the Commission.). There must also be consequences in case the commitment is not fulfilled (i.e. immediately cease the aid scheme in question and recover any aid granted from that moment).

## Section 4.8 – Aid for the security of electricity supply

**Point 284**
**Modification proposed:**

284. Market and regulatory failures may mean price signals fail to provide efficient investment incentives, leading for instance to inadequate electricity resource mix, **firm** capacity, flexibility or location. Moreover, the significant transformation in the electricity sector due to technological change and climate challenges raises new challenges for ensuring the security of electricity supply. While an increasingly integrated electricity market will normally allow to exchange electricity EU wide, thereby mitigating national security of supply problems, situations may occur where even in coupled markets security of supply may not be guaranteed at all times in some Member States or regions. As a result, Member States may consider the introduction of measures to ensure certain levels of security of electricity supply.

**Justification:**

Lack of sufficient firm capacity is one of the basic forms in which a resource adequacy issue may materialise and, hence, should be explicitly mentioned.

## Point 299

### Modification proposed:

299. In its assessment, the Commission will take account of the following elements to be provided by the Member State:

- (a) an assessment of the impact of variable generation, including that originating from neighbouring systems, **and the potential benefits of a more efficient integration of that variable generation;**
- (b) an assessment of the impact of demand-side participation, including a description of measures to encourage demand side management;
- (c) an assessment of the actual or potential existence of interconnectors and major transmission grid infrastructure, including a description of projects under construction and planned;
- (d) an assessment of any other element which might cause or exacerbate the security of electricity supply problem, such as caps on wholesale prices or other regulatory or market failures. Where required under Regulation (EU) 2019/943, the implementation plan referred to in Article 20 (3) of that Regulation must be subject to a Commission opinion before aid can be granted. The implementation plan and opinion will be taken into account in the necessity assessment.

### Justification:

The massive deployment of renewable variable generation is the most relevant challenge in the electricity system, including in terms of security of supply. Hence, Member States should provide an assessment on how they are integrating those renewable variable generations, the challenges they are encountering and how to deal with them in the most efficient manner.

## Point 311

### Modification proposed:

311. The lead-time between the granting of the aid and the deadline by when projects must be delivered, **together with the duration of the aid,** should allow effective competition between the various eligible projects.

### Justification:

Competition between different projects depends largely on the technologies involved (e.g. differences in CAPEX intensity, in lead times to obtain the permits and build, in lifespan, etc.). Therefore, competition will be effective depending not only on the lead time allowed between the granting of the aid and the deadline by when projects must be delivered, but also on the duration of the aid. In this sense, a short aid duration would be detrimental to those projects with a longer lifespan, which include options such as pumped hydro storages that are environmental friendly and contribute significantly to the integration of variable renewable generators.

### Point 323

#### Modification proposed:

323. Security of electricity supply measures should not:

- (a) create undue market distortions nor limit cross-zonal trade;
- (b) reduce incentives to invest in **an efficient level of** interconnection capacity – for example by **unduly** reducing congestion revenue for existing or new interconnectors;
- (c) undermine market coupling, including intra-day and balancing markets;
- (d) undermine investment decisions on capacity which preceded the measure.

#### Justification:

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.

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.

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.

### Point 326

#### Modification proposed:

326. Measures that incentivise new investments in energy generation based on natural gas, **including refurbishments of existing installations entailing the extension of their lifespan**, may support security of electricity supply but aggravate negative environmental externalities in the longer term, compared to alternative investments in non-emitting technologies. To enable the Commission to verify that the negative effects of such measures can be offset by positive effects in the balancing test, Member States should explain how they will ensure that such investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target. In particular, the Member States should explain how a lock-in of this gas-fired energy generation will be avoided. For example, this may include binding commitments by the beneficiary to implement decarbonisation technologies such as CCS/CCU or substitute natural gas by renewable or low carbon gas or to close the plant on a timeline consistent with the Union's climate targets.

#### Justification:

The refurbishment of existing natural gas-based generators that entail the extension of their lifespan may support security of electricity supply but aggravate negative environmental externalities in the longer term. Therefore, it must be made clear that such refurbishments are to be treated in the same manner as new investments in terms of verifying that their negative

effects can be offset by positive effects in the balancing test.

## Section 4.9 – Aid for energy infrastructure

### Point 332

#### Modification proposed:

332. The Commission considers that a legal monopoly which excludes distortions of competition exists where the following cumulative conditions are met:

- (a) 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 <sup>114</sup>;
- (b) 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;
- (c) the service is not in competition with other services, **especially considering the new context brought by the energy system integration and the new possibilities for substitutability**;
- (d) if the operator of the energy infrastructure is active in another (geographical or product) market that is **either regulated or open to competition**, 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 **for electricity and gas**.

#### Justification:

Energy System Integration (ESI) directly refers to the substitutability of different energy carriers:

- 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).

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.

## Point 339

### Modification proposed:

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:

- (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, **unless that infrastructure has not been appropriately assessed under an energy system integration perspective.**
- (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, **the energy system integration**, 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.
- (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. **Furthermore, Member States must demonstrate that such infrastructure is basically needed for enabling well-identified renewable and low carbon energy producers to operate.** 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.
- (d) **With regard to infrastructures fit 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.**



**Justification:**

Three issues to be highlighted:

- 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.